133534
133-34

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 188

JOSIAH FOGG, APPELLANT,

vs.

DE WITT C. BLAIR, TRUSTEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 15, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 188.

JOSIAH FOGG, APPELLANT,

vs.

DE WITT C. BLAIR, TRUSTEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Exhibit A—Deed from the St. Louis, Hannibal & Keokuk R. R. Co. to De Witt Clinton Blair, August 1, 1887	29	11
B—Form of bond	46	20
Answer of Josiah Fogg to bill	49	21
Cross-bill of Josiah Fogg	77	28
Answer of De Witt C. Blair to cross-bill	105	35
Replication to answer of Josiah Fogg	117	39
Replication of answer of De Witt C. Blair	119	39
Decree dismissing cross-bill	121	40
Opinion of Judge Brewer	121	40
Petition of Josiah Fogg for rehearing	133	44
Order denying petition for rehearing	137	45
Opinion of Judge Brewer on petition for rehearing	139	45
Order allowing appeal	145	47
Order approving bond and directing clerk to make transcript	145	47
Bond	147	47
Exhibit A—Bond of county of Lincoln	149	48
B—Bond of county of Ralls	151	49
Order granting leave to receiver to defend suit of Fogg *vs.* St. L., H. & K. R. R. Co. *et al.*	155	49

JUDD & DETWEILER, PRINTERS, WASHINGTON, DECEMBER 3, 1889.

	Original.	Print.
Master's report	157	50
Act to incorporate the St. Louis & Keokuk R. R. Co.	159	50
Stipulation as to extracts from record books	185	59
Introduction of certain parts of minute books	186	59
Objections to the introduction of minute books	186	59
Organization of St. L. & K. R. R. Co. under charter	186	59
Resolution ratifying subscription of $75,000 to Ralls Co. Branch	190	61
Report of committee auditing claim of Fogg *et al.*	192	62
Resignation of Josiah Fogg as president	193	62
Resolution of thanks to Josiah Fogg for his services	194	63
Contract with John S. Wolff, May 4, 1870	195	63
Modification of contract with John S. Wolff, September 22, 1870	205	67
Resolution declaring John S. Wolff's contract forfeited	209	69
Second resolution declaring John S. Wolff's contract forfeited	212	70
Contract with Mo. & Ia. R'y Construction Co., April 12, 1872	215	71
Resolution ratifying contract with M. & I. Construction Co.	225	74
Names of directors elected at stockholders' meeting, May 6, 1872	225	74
Resolution authorizing transfer of St. L. & K. R. R. to St. L., H. & K. R. R. Co.	228	75
Letter of W. W. Walker proposing to modify contract with M. & I. R'y Con. Co.	229	76
Resolution accepting proposition to modify contract with M. & I. R'y Con. Co.	231	76
Minute book of directors and stockholders of St. L., H. & K. R. R. put in evidence, &c.	231	77
Articles of incorporation of St. L., H. & K. R. R. Co.	232	77
Proceeding of board of directors of St. L., H. & K. R. R. Co.	246	83
Election of officers of St. L., H. & K. R. R. Co.	247	83
Names of executive committee	248	84
Resolution authorizing purchase of St. L. & H. R. R. Co.	248	84
Resolution authorizing mortgage of St. L., H. & K. R. R. Co.	249	84
Resolution authorizing contract with Mo. & Ia. R'y Con. Co.	250	85
Annual meeting of stockholders, March 4, 1873	252	86
Names of stockholders present	253	86
Names of directors elected	253	86
Resolution approving purchase of St. L. & K. R. R. Co.	257	88
Certificates as to majority of stockholders, &c.	258	88
Certificates as to filing transfer, &c.	260	89
Deed of transfer of P. C. S. L. R. R. Co. to St. L., H. & K. R. R. Co., March 4, 1873	263	90
Board of directors' meeting, May 5, 1873	278	96
Names of officers elected	278	96
Letter of President Walker, asking extension of time, March 10, 1873	279	96
Resolution granting extension of time for completion of railroad	280	97
Election of directors, March 2, 1875	281	97
Names of directors elected March 2, 1875	282	98
Election of directors, June 6, 1877	283	98
Names of directors elected June 6, 1877	284	99
Election of directors, May 6, 1878	285	99
Names of directors elected May 6, 1878	285	100
Election of officers, May 6, 1878	287	100
Election of directors, March 4, 1879	287	101

	Original.	Print.
Names of directors elected	287	101
Names of officers elected for 1879	288	101
Election of directors, April 7, 1880	289	101
Names of directors elected April 7, 1880	289	102
Election of directors, March 16, 1881	290	102
Names of directors elected March 16, 1881	291	102
Election of directors, April 6, 1882	291	103
Names of directors elected April 6, 1882	292	103
Election of directors, March 6, 1883	293	104
Names of directors elected March 6, 1883	293	104
Resolution ratifying contract with John I. Blair and Moses Taylor	294	104
Contract with John I. Blair and Moses Taylor, February 24, 1881	294	104
Testimony of George D. Reynolds	307	109
List of stockholders, as shown by books, to December 12, 1883, &c.	324	118
Form of certificate, &c.	333	122
Deed transferring all the property of the St. L. & K. R. R. Co. to St. L., H. & K. R. R. Co., March 4, 1873	335	123
Testimony of Josiah Fogg	353	129
S. R. Wolfolk	374	138
Dr. S. J. Reynolds	401	150
Report of committee appointed to examine treasurer's accounts	419	157
Order of Pike county court subscribing bonds, &c.	421	158
Resolution of directors approving contract with Blair and Taylor	432	161
Contract with Blair and Taylor, May 6, 1878	432	161
Subscription by Lincoln county	443	165
Resolution accepting subscription by Lincoln county	446	166
Subscription by Ralls county	447	166
Resolution accepting subscription by Ralls county	456	169
Contract of July 15, 1872, between St. L., H. & K. R. R. Co., and Mo. & Ia. R'y Con. Co.	459	170
Demurrer to evidence introduced by Fogg	467	172
Testimony of De Witt C. Blair	470	172
John I. Blair	534	202
Mortgage from St. L., H. & K. R. R. Co. to Mitchell and Blair, October 1, 1872	600	227
Ralls county bond offered	628	237
Lincoln county bond offered	628	237
Testimony of Josiah Fogg (recalled)	628	238
Master's certificate	630	238
Record in case of Fogg *vs.* St. L., H. & K. R. R. Co. *et al.* (equity)	633	238
Bill of complaint	633	239
Answer	642	243
Exceptions to parts of answer	656	250
Order overruling exceptions	660	252
Replication	660	252
Final decree	661	253
Motion to modify decree	662	253
Order denying motion to modify decree	663	254
Record in case of Fogg *vs.* St. L., H. & K. R. R. Co. *et al.* (law)	665	254
Amended petition	665	254
Exhibit A—Statement of account	671	258
Demurrer	672	258
Order overruling demurrer	673	259

	Original.	Print.
Answer	674	259
Replication	676	260
Amended answer	677	261
Replication	679	262
Judgment	681	263
Fi. fa.	683	263
Clerk's certificate	684	264

1–9 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

Be it remembered that on the 6th day of February, A. D. 1884, there was filed in said court a certain bill of complaint in words and figures following, to wit:

Bill of Complaint.

In the Circuit Court of the United States for the Eastern District of Missouri. In Equity.

To the Honorable Samuel Treat, district judge, holding the circuit court of the United States for the eastern district of Missouri:

Your orator, De Witt Clinton Blair, who is a citizen of the State of New Jersey, as trustee under and by virtue of the mortgage deed of trust hereinafter fully mentioned and described, brings this his bill against the St. Louis, Hannibal & Keokuk Railroad Company, a corporation duly organized under the laws of the State of Missouri, and a citizen of the State of Missouri, located and doing business in said eastern district of Missouri.

—— McLean, who is a citizen of the State of Missouri; —— Naylor, who is a citizen of the State of Missouri; Josiah Fogg, who is a citizen of the State of Missouri, and —— Vanness, who is a citizen of the State of Missouri.

10 And thereupon your orator complains and says that the St. Louis, Hannibal & Keokuk Railroad Company is a corporation existing under and by virtue of the laws of the State of Missouri; that the said railroad company was incorporated and chartered under certain articles of incorporation filed in the office of the secretary of state of Missouri upon the thirteenth (13th) day of June, A. D. 1872; that in and by its said articles of incorporation the said railroad company was authorized to build its road from the city of St. Louis to a point in the northeast corner in said State of Missouri, opposite to the city of Keokuk, in the State of Iowa, with certain branches mentioned in said articles; that the authorized capital stock of said company was six million dollars ($6,000,000); that it was, among other things, provided in said articles of incorporation that the board of directors of the said company should have full power and authority to authorize the president and secretary to execute a mortgage or deed of trust on the whole or any part of the property of the company to secure the payment of the bonds thereof in such amounts and upon such terms and conditions as the directors might think best.

That on or about the first day of August, in the year of our Lord eighteen hundred and seventy-seven, the said St. Louis, Hannibal & Keokuk Railroad Company, then being the owner and possessor of a

portion of the line of railroad which it was by its charter authorized to construct and maintain as aforesaid, and being engaged
11 in the construction of said authorized line of railroad, duly made and executed under its corporate seal in pursuance of a resolution of the board of directors and caused to be subscribed by its president, secretary, and treasurer its certain indenture of mortgage or deed of trust bearing date on said first day of August, in the year of our Lord eighteen hundred and seventy-seven, whereby it conveyed in mortgage to De Witt Clinton Blair as trustee, to secure a then intended issue of the first-mortgage bonds of said railroad company to the amount of sixteen hundred and eighty thousand dollars ($1,680,000), twelve hundred of the said bonds to be of the denomination of one thousand dollars ($1,000.00) each, and to be numbered from one to twelve hundred, inclusively, eight hundred of the said bonds to be for five hundred dollars ($500.00) each, and to be numbered from one to eight hundred, inclusively, and eight hundred of the said bonds to be for one hundred dollars ($100.00) each, and to be numbered from one to eight hundred, inclusively, the said bonds to bear date upon the first day of October, in the year of our Lord eighteen hundred and seventy-seven, and to be payable at the agency of the company, in the city of New York, in forty years from said last-mentioned date, with interest thereon in the meantime at the rate of seven per cent. per annum, payable semi-annually on the first days of April and October in each year, all and singular the railroad of the said St. Louis, Hannibal and Keokuk Railroad Company, situated between the cities of Hannibal and St. Louis, in the State of Missouri, now constructed or
12 hereafter to be constructed and including all branches, tracks, right of way, all depot buildings, depot grounds, cattle yards, station-houses, engine-houses, and other buildings, including all car, location, and machine shops and all machinery and tools now held or hereafter to be acquired for use in connection with said railroad; also including all locomotives, tenders, cars, and all other rolling stock and equipments of every description, together with all implements and materials for the construction, operation, or repairing of said railroad or any of its branches; and also all franchises connected with or relating to said railroad which are now held or may hereafter be acquired by the said railroad company; and also all rights, claims, and benefits in and to all leases, contracts, and agreements now made or hereafter to be made with any parties whomsoever, together with all and singular the tenements and appurtenances thereunto belonging, and all incomes and profits thereof; and also all estate and interest whatsoever as well in law as in equity of the said railroad company.

And by the said indenture it was further provided in substance that the said trustee may, in his discretion, instead of selling said railroad property under the power of sale in this deed of trust, foreclose this deed of trust or mortgage in the United States court for the district of Missouri at any time in case of default in the payment of principal or interest of said bonds or any part thereof when the same same shall become due and payable, according to the tenor

and effect thereof, and of the coupons thereunto attached, or in any of the requirements to be performed by the party of the first part after six months have elapsed after such default and demand
13 of payment and upon the written request of the holders of the majority in amount of the said bonds then issued and outstanding.

And it was in and by the said indenture further provided that if the party of the first part thereto, namely, the St. Louis, Hannibal & Keokuk Railroad Company, should at any time suffer any lien by judgment or otherwise against said property or any part thereof, or should permit or suffer any waste to be committed by which said lien, judgment, or waste said property or any part thereof should be impaired in value, it should be the duty of said trustee to take such proceedings at law or in equity as should be deemed necessary or advisable for the protection of the interests of the holders of said bonds.

And thereafter the said mortgage or deed of trust was duly recorded in the proper recording offices of the respective counties of the State of Missouri hereinafter specified, viz.: In Marion county, on the 8th day of December, in the year 1879; in Pike county, on the 22d day of November, 1879; in Saint Charles county, on the 20th of November, 1879; in Ralls county, on the 6th of December, 1879; in Lincoln county, on the 21st day of November, 1879.

And your orator further shows that Exhibit A to this bill annexed contains a true copy of the said mortgage or deed of trust and of the certificates of acknowledgment and recording endorsed thereon, and your orator especially refers thereto as a part of this bill, and prays that the same may be so taken.

That it was, among other things, provided in the said mortgage or deed of trust that the said bonds should only be issued to the amount and extent of twelve thousand dollars ($12,000) per
14 mile of completed road, and that the same should not be valid unless countersigned by the trustee; that in pursuance of said provision of the said mortgage or deed of trust there was issued nine hundred and eighty-one thousand dollars of bonds under the said mortgage or deed of trust, the said railroad company having completed eighty-one and three-quarters miles of its said railroad; that the said bonds so issued as aforesaid were bonds numbered from one to nine hundred eighty-one, all dated on the first day of October, A. D. 1877; all countersigned by the said De Witt Clinton Blair, trustee, and being each for the sum of one thousand dollars ($1,000), being each payable to De Witt Clinton Blair or bearer, at the agency of the company, in the city of New York, on the first day of October, one thousand nine hundred and seventeen (1917), with interest from the first day of October, 1877, at the rate of seven per centum per annum, on the first days of April and October in each year until the said principal shall be fully paid, upon the presentation of the coupons annexed to each of said bonds as they respectively become due and payable, said interest being evidenced by eighty (80) coupons attached to each of the said bonds, each of said coupons being for the sum of thirty-five dollars ($35),

and payable on the first days of April and October in each year at the agency of the company, in the city of New York, all of said bonds being signed by S. P. Wisner, president of said company, and John F. Ely, treasurer of said company, and each of said coupons being signed by John F. Ely, treasurer of said company, and each of said coupons being payable to bearer, all of said nine hundred and eighty-one bonds with coupons attached being in the same form, a copy of which is contained in the said first-mentioned mortgage or deed of trust hereunto attached and marked Exhibit "A."

And your orator further represents that he has been duly requested in writing, as required by the said mortgage, by the holders of a majority of the bonds so issued thereunder as aforesaid to commence proceedings for the foreclosure of said mortgage and for the appointment of a receiver to take possession of the said property and franchises under the orders of this court, and that the parties who have requested your orator to take such action as aforesaid are as follows: John I. Blair, who is the owner and holder of four hundred and twenty-four thousand dollars in amount of the said bonds, said bonds being numbered from 543 to 760, both inclusive; 59 to 61, both inclusive; 101 to 210, both inclusive; 407 to 473, both inclusive; 476 to 488, both inclusive, and from — to —, being in all four hundred and twenty-four of the said bonds, and the executors of the estate of Moses Taylor, deceased, who are the holders of four hundred and twenty-eight thousand dollars in amount of said bonds, numbered from 212 to 406, both inclusive, and from 489 to 503, both inclusive, and from 761 to 978, both inclusive, being in all four hundred and twenty-eight of the said bonds.

And your orator further represents that the said St. Louis, Hannibal & Keokuk Railroad Company has not paid the coupons upon any of the said bonds due upon the first day of April, 1881, upon the first day of October, 1881, upon the first day of April, 1882, upon the first day of October, 1882, upon the first day of April, 1883, and upon the first day of October, 1883, and demand of payment of said interest-coupons has been duly made upon said company more than six months before the commencement of this suit.

And your orator further avers that the said railroad company has defaulted in the payment of each and every installment of semi-annual interest falling due upon said bonds, as evidenced by the said coupons ever since the date of the issue of the same, and has never paid any interest upon the same since the said coupons were so owned as aforesaid by the said Blair and the executors of the estate of Moses Taylor, although due demand was regularly made for the payment of the said installments of interest, and that all of said interest remains due and unpaid.

And your orator further represents that it is in and by the said mortgage or deed of trust also provided that in case default in the payment of interest upon the said bonds shall be made and shall continue for the space of one year it shall be lawful for the said trustee, after due demand as aforesaid, to sell said property covered

by and embraced in said mortgage security, either by advertisement and sale or by foreclosure of the said mortgage or deed of trust in court, as may in the discretion of the trustee be deemed proper, and may apply the proceeds of such sale to the payment of whatever interest may be due upon the bonds at the time of said sale, and also to the payment of the principal thereof, and that a strict foreclosure may in such case be made of said mortgage, and the said mortgaged property may be conveyed by due and sufficient deeds and
17 conveyances to the purchaser thereof, whether at a sale under the said power or at a judicial sale, if the said trustee shall elect to foreclose the same by proceedings in court; and your orator alleges that it is in and by said provision of said mortgage intended to be provided and agreed that in case of the failure to pay interest upon the said bonds, and the continuance of such default for one year, that the principal of said bonds may be declared due, and the said mortgaged premises may be sold to satisfy said principal and interest of the said bonds; and your orator alleges that the holders of the said bonds have elected to declare the same due by reason of the default of interest having continued thereon for more than one year as aforesaid, and they do hereby declare the same due and payable, anything in the said bond or the said deed of trust to the contrary notwithstanding.

And your orator further shows that the said railroad company did not build the entire line of said railroad so as aforesaid authorized to be built by the said charter, but that its line of railroad as constructed commences at or near the city of Hannibal and terminates at the station called Gillmore Springs, in the county of ——, in said State of Missouri, a distance of about eighty-one & ¾ miles, and that the said railroad is in the possession, use, and enjoyment of the said railroad company, and was embraced in and covered by the said mortgage or deed of trust hereinbefore set forth, together with the appurtenances and equipments thereof and the other properties, rights, and things by the said mortgage or deed of trust con-
18 veyed to the said De Witt Clinton Blair, as trustee.

Your orator further shows, upon information and belief, that the said mortgaged premises, including the whole line of railroad, with the appurtenances and equipments thereof, are but a slender and scanty and wholly insufficient security for the amount now owing and unpaid for principal and interest upon the said outstanding mortgage bonds issued under and secured by the said mortgage or deed of trust, and that the value of the whole of said mortgaged premises and property is less than the amount owing and unpaid on said mortgage bonds; that there is every ground and reason to believe and there appears no reason to doubt that the whole of said mortgaged premises and property will, upon the sale thereof under foreclosure, inevitably produce a much less sum than the amount owing and unpaid on the said mortgage bonds and leave a large unpaid deficiency owing to said bondholders, and that it is essential to the preservation of the rights and equities of said bondholders that the current net income of said mortgaged premises should be applied, as far as the same will go, in reduction

of the said deficiency, which must be the result of the said foreclosure sale, and that it is also essential to the protection and security of the said bondholders that through a proper receivership the said railroad and other mortgaged premises should be upheld, maintained, and kept in suitable repair and in suitable operation.

And your orator further alleges that it is, among other things, in and by the said mortgage or deed of trust provided that in
19 case the same be foreclosed in court by the trustee all the costs and expenses of managing said property and causing the same to be foreclosed and sold shall be first paid out of the proceeds of the sale thereof; and your orator charges that by virtue of such provision the commissions of said trustee, his counsel fees for conducting such proceedings and foreclosing such mortgage, and all other expenses attendant thereon are thereby made a first lien and charge upon the proceeds of said sale, to be paid before any other indebtedness whatsoever of the said railroad company.

Your orator further alleges that, although it is provided in and by the said mortgage or deed of trust as hereinbefore set forth that the said railroad company shall not permit any judgment or other lien to be a claim against the said railroad property, yet, not regarding said covenant, the said railroad company has allowed various judgments to be obtained by which the security of the said bonds is threatened and endangered; that judgment has been taken against said railroad company in the circuit court of Ralls county, at the March term, 1883, in favor of the sheriff of said county for the taxes due upon the said railroad property for the years 1874, 1875, 1877, 1878, and 1880, said judgment amounting to the sum of six thousand nine hundred and twenty-nine dollars and thirty-five cents ($6,929.35), and also that judgment has been taken against said company in the circuit court of Pike county in favor of the sheriff of Pike county for the taxes due upon the property of said railroad company for the sum of four thousand dollars ($4,000). Your
20 orator further avers and charges that the taxes due upon said property since the year 1880 are still due and unpaid.

And your orator further alleges that sundry persons who are made parties defendants to this bill have recovered judgments in various amounts against the said company in various counties through which said road passes, and that other parties, some of whom are made parties defendants to this bill, and some of whom are unknown to your orator, and your orator prays that when found they may be made parties defendant hereto, have recovered judgments or begun suit against said company, and that the amounts of such claims, either in judgment or in suit against said company, so far as known to your orator, is between thirty thousand dollars ($30,000) and forty thousand dollars ($40,000).

And your orator further avers, upon information and belief, that the said St. Louis, Hannibal & Keokuk Railroad Company is now encumbered and embarras-ed by a large floating unsecured debt, amounting in the aggregate, so far as your orator has been informed of the same, to about sixty-three thousand dollars ($63,000); that a part of said floating indebtedness amounting to about fourteen thou-

sand dollars ($14,000) is due to various railroads for trackage and other facilities afforded by the said railroads to the said railroad company; and your orator fears that if by reason of the non-payment thereof the said railroad companies refuse to allow the use of their tracks any longer to the said railroad company the business of said railroad company will be seriously interferred with, and it will be impossible for it to continue to connect with other roads and
21 obtain entrance into the town of Hannibal, upon which connection and entrance of said town the business of the said defendant railroad company very largely depends, and that a large amount of said floating indebtedness, so far as your orator is informed about eleven thousand seven hundred and forty-five dollars ($11,745), is due for rent of cars, locomotives, and rolling-stock of every kind which is used by the said defendant railroad company to operate its said road, and if the said rent be not paid your orator fears that the said rolling-stock may be lost to the said company and its business thereby seriously interferred with, if not totally destroyed.

That a large amount of said indebtedness is due for supplies, amounting, as your orator is informed and believes, at the present time to about twelve thousand six hundred and sixty-six dollars ($12,666), and that there is due upon the pay-rolls of the company about seven thousand seven hundred dollars ($7,700), and that there is due upon a note given for a depot about five thousand five hundred dollars ($5,500); that certain amounts are due for telegraph poles and to the contracting company which built the said road; and your orator fears that such of said claims as are not already in judgment may at any time be enforced by judgment against said company, the effect whereof would be to interfere with the proper and successful operation of said road and to divert the income of said road or a large portion thereof from its due and proper application, first, to the preservation, maintenance, and operation of said railroad, and then towards the payment of the interest and principal of the said mortgage bonds, for which said income is
22 primarily pledged, and to apply the same towards the payment of such floating-debt creditors who may sue and recover judgments, and whose rights and equities in respect to such property and income are wholly subordinate and subsequent to those of the mortgage bondholders.

And your orator charges that the said defendant railroad company is allowing the said property to go to waste and not keeping the same in any proper and suitable repair; that the said rolling-stock held under said leases is not properly kept in repair, and that the road-bed and bridges and all other portions of said road are not kept in proper condition and repair, and are being permitted by said railroad company to become wasted and at least partially destroyed, to the great danger and damage of the security pledged by the said mortgage or deed of trust for the payment of the bonds therein named, principal and interest.

And your orator, upon information and belief, further shows that the said mortgaged premises are so circumstanced that it would not be practicable, except at great and irreparable sacrifice and loss, to

sell a portion of said mortgaged property, so as to satisfy only the interest accrued and unpaid upon the said mortgaged bonds, and that no separation of said mortgaged premises for the purposes of sale could be made without very great depreciation of property and great loss and damage to the bondholders and to all parties interested in said mortgaged property.

And your orator further represents that the defendants to
23 this bill hereinafter named claim to have liens as judgment creditors, encumbrances, or otherwise, upon the premises described in said mortgage or deed of trust, namely, —— McLean, —— Naylor, and Josiah Fogg, and —— Vanness; and your orator avers that the interest, if any, of each one and all of the said persons above named accrued long subsequent to the lien of the mortgage or deed of trust hereinbefore set forth and are junior and subordinate thereto.

And your orator further shows that there may be other persons and corporations who claim some lien or interest in and upon the said premises, who are at present unknown to your orator, but whom when discovered your orator asks to have made parties defendant hereto. And your orator states, upon information and belief, that if there are any such claimants as last aforesaid that all their interest in said premises accrued subsequent to the lien of the mortgage or deed of trust hereinbefore set forth; and your orator prays that if any such persons and corporations or any of the persons or corporations hereinbefore named have any such liens or other interests in said premises they may state and show the same in answer to this bill, in order that the same may be properly disposed of by this honorable court.

And your orator alleges that the said St. Louis, Hannibal & Keokuk Railroad Company is insolvent and unable to pay its debts in full and has been so insolvent for a long space of time, and that the said railroad company has never established any agency
24 in the city of New York or elsewhere where its said bonds and coupons attached thereto could be paid or payment thereof demanded, and that in consequence of such failure of said railroad company to establish such agency demand of payment of said interest coupons as the same respectively became due and payable had to be made of the officers of said company in the management and control of the same, and that such demand hereinbefore set forth was made of said railroad company through its president.

And your orator further avers that, by reason of the insolvency of said railroad company and its inability for a long period of time prior to the filing of this bill to pay its debts or the interest upon its said bonds, such demand of payment of interest at any agency of said company, if any such had been established, would have been totally unavailing, as no funds have been or could have been, by reason of such insolvency, provided by the said company at any place to meet the interest accruing upon its said bonds.

In consideration of the premises, and inasmuch as your orator has no sufficient remedy in the premises, save in this your honor's court of equity where matters of this kind are properly relievable

and cognizable, your orator prays that the said defendants hereinbefore named, together with such other persons at present to your orator unknown, who may have or claim some lien or other interest upon the property so mortgaged as aforesaid, and who may afterwards and pending this suit become known to your orator and be made parties defendants to this suit, may be required to answer all and singular the premises aforesaid fully and particularly, but not under oath, the oath of said defendants and each of them being hereby expressly waived, and that a receiver may be appointed under the order of this honorable court, with the usual powers of receivers in equity, to take possession of all of said mortgaged property and the appurtenances thereof, and to hold, manage, run, and control the same, and to hold, use, and enjoy, under the orders of this court, all the appurtenances and franchises of said railroad company, and to receive the income and earnings thereof, and of all the other of said mortgaged premises, property, rights, and interests and the fruits thereof, and apply the same as shall be equitable and proper, under the order and direction of this court, during the pendency of this suit and until such receiver shall be discharged by the further order of this court and until the said mortgaged premises shall be foreclosed and sold by decree of this court, and that it may be declared and decreed that the principal of said mortgaged bonds to the amount of nine hundred and eighty-one thousand dollars, issued under the said mortgage or deed of trust, has become and is now due and payable, and that an accounting may be had by this honorable court or by one of its masters of the amount due and owing and unpaid upon the said bonds so issued and outstanding unpaid under the said mortgage or deed of trust as aforesaid, and that payment of the said amount so found to be due may be decreed by this court to be made by the said railroad company or by some of the said defendants, by a short day to be appointed for that purpose by this court, and that in default of such payment all and singular the said line of railroad with its appurtenances and franchises and rolling-stock and equipments and all other property, premises, rights, franchises, and things mentioned in or covered or embraced by the said mortgage or deed of trust, or any property which may be hereafter purchased, held, or acquired under the orders of this court by the receivers so prayed to be appointed herein as aforesaid, may be adjudged and decreed to be sold at public auction by or under the direction of this court or by a master or special commissioner or other officer of this court or other suitable person or persons according to the course and practice in cases of mortgage foreclosure of such character; and that the same may be actually so sold and that by such sale and the conveyance or conveyances to be thereupon executed, the said defendant, The St. Louis, Hannibal & Keokuk Railroad Company and all the other defendants to this suit and all persons claiming or to claim under them or any of them subsequent to the commencement of this action as purchasers, incumbrancers, or otherwise howsoever, may be absolutely and forever barred and foreclosed from all right, claim, title, lien, or equity of redemption in or to or in re-

spect of the premises, properties, rights, and franchises so sold and conveyed, and that the actual possession of the said premises, property, rights, and franchises so sold and conveyed may be decreed to be delivered to the purchaser and grantee, and that such sale may
27 be declared to be in execution and enforcement of the said mortgage or deed of trust heretofore set forth, and that out of the proceeds of such foreclosure sale your orator may first be paid his costs and expenses in this action, including all counsel fees that have been incurred by him therein, and all the necessary costs, including counsel fees which may have been incurred by the said receiver to be appointed herein, and all the court costs and expenses in this action, and that the residue of the proceeds of such foreclosure sale, or so much as may be requisite for said purpose, may be paid over and applied under the direction and in pursuance of the order and decree of this court, first, to the holders of certificates of indebtedness issued by the said receiver, if any such should be hereafter and pending this suit ordered and directed by this court to be issued by such receiver, with the interest thereon; and, secondly, towards the payment of any amounts which, pending this suit, the court may adjudge to be prior liens or entitled in the same way to claim priority of payment over the said mortgage indebtedness; and, thirdly, to the payment of the amount so found and adjudged due and unpaid upon the said mortgage bonds and the coupons to the respective owners and holders thereof as their respective interests shall hereafter appear, and that the residue, if any, shall be paid out, under and according to the further orders and directions of this court and upon such conditions and in such manner as to this court may seem fit, and that your orator may have such other relief
28 and decree in the premises as may be agreeable to equity.

May it please your honor to grant unto your orator the writ of subpœna issuing out of and under the seal of this court, according to the course and practice thereof, directed to the said defendants, the St. Louis, Hannibal & Keokuk Railroad Company, —— McLean, —— Naylor, Josiah Fogg, and —— Vanness, therein and thereby commanding said defendants, on a certain day and under a certain penalty therein to be inserted, to be and appear before your honor in this court, then and there to answer all and singular the premises, and to stand to, abide by, and perform such order, direction, and decree therein as to your honor shall seem meet and agreeable to equity and good conscience.

And may it please your honor to grant unto your orator the people's writ of injunction directed to the said defendant, the St. Louis, Hannibal & Keokuk Railroad Company, its officers, agents, or attorneys, restraining them or either of them from any further interference with or attempt to manage or control the said railroad property or franchises, rights, and interests until the further order of this court, and your orator will ever pray, &c.

DE WITT CLINTON BLAIR, *Trustee*,
By WALTER C. LARNED, *His Solicitor*.

WALTER C. LARNED,
Solicitor and of Counsel for Complainant.

29 EXHIBIT "A."

Mortgage.

This indenture made on the first day of August, in the year of our Lord eighteen hundred and seventy-seven, between the St. Louis, Hannibal & Keokuk Railroad Company, a corporation duly organized under the laws of the State of Missouri, of the first part, and De Witt Clinton Blair, of Belvidere, of the State of New Jersey, of the second part, witnesseth:

Whereas the party of the first part is authorized by law to borrow any sum or sums of money which may be necessary to construct and equip its railroad and mortgage its corporate property and franchises, or convey the same by deed of trust to secure the payment of any debt or obligation it may contract;

And whereas the said first party has by resolution of its stockholders and board of directors authorized its president, secretary, and treasurer to execute its first-mortgage bonds, to the amount of sixteen hundred and eighty thousand dollars, to be secured by the first mortgage or deed of trust on all its property and franchises situated in and between the cities of St. Louis and Hannibal, in the State of Missouri, the proceeds of said bonds to be used exclusively to complete and equip its railroad between the points above designated, with a branch, to the coal fields of Lincoln county, in said State, and to pay all debts contracted therefor; and whereas said resolutions authorize said bonds to draw interest at the rate of seven per cent. per annum, payable semi-annually on the first day of April and October, at the agency of the company, in the city of New York;

30 And whereas said resolutions direct the issue of said bonds to be limited to twelve thousand dollars per mile of main track, and to be issued no faster than the track is laid and the road is operated; and said resolutions also direct that twelve hundred of said bonds are to be of the denomination of one thousand dollars each, numbered from one to twelve hundred, inclusively; eight hundred of the bonds to be for five hundred dollars each, and numbered from one to eight hundred, inclusively; and eight hundred of the bonds to be for one hundred dollars each, and numbered from one to eight hundred, inclusively; and whereas said resolutions direct the payment of the principal of said bonds to be made at the agency of the company, in the city of New York, in forty years from the first day of October, eighteen hundred and seventy-seven, and to be provided for by a sinking fund, to commence from the first day of August, eighteen hundred and eighty-nine, by the payment of five thousand dollars, and the same amount to be paid on the first day of August each year thereafter, with an annual increase of one thousand dollars so long as such increase may be necessary and adequate to redeem and retire all its said bonds by the time they matured, provided such increase shall not make the sinking fund

exceed two per cent. of the gross earnings until after the year nineteen hundred.

And the said president and treasurer may make such conditions and stipulations in said deed of trust as they may deem for the best and mutual interest of the bondholders and stockholders of this company; and to have said bonds duly prepared and deposited with the said party of the second part, to be delivered over to the treasurer of said railroad company or to his order, to be used exclusively as aforesaid. Said bonds are in the form following, varying only in numbers and amounts as herein provided:

31

Trustee's Certificate.

The undersigned trustee doth hereby certify that this is one of the series of bonds referred to in the within-mentioned deed of trust and issued only to the amount of twelve thousand dollars per mile on completed road.

DE WITT C. BLAIR, *Trustee.*

To each of which bonds there is attached eighty interest coupons numbered, respectively from one to eighty, inclusively, in the following form, varying only in number and amount, according to the denomination of the bond:

$35. St. Louis, Hannibal & Keokuk Railroad Company will pay the bearer thirty-five dollars at its agency, in the city of New York, on April the first, 1878. Interest on bond —.

JOHN B. ELY, *Treasurer.*

The five-hundred-dollar bonds have eighty coupons attached, for seventeen dollars and fifty cents each, and the one-hundred-dollar bonds have eighty coupons attached for three hundred and fifty cents each.

And whereas the said party of the first part has resolved to secure said bonds by deed of trust to De Witt Clinton Blair, of Belvidere, State of New Jersey, as trustee of all its railroad franchises and property owned or hereafter to be acquired in the State of Missouri, and has authorized and directed its president, secretary, and treasurer to execute the same as the act and deed of said company in such form as its president, secretary, and treasurer shall approve, and deliver to said trustee said deed of trust and said bonds signed in the name of said corporation by its president, secretary, and treasurer, and sealed with the corporate seal, having interest coupons attached to said bonds, with the signature of the treasurer engraved thereon:

32

Now, therefore, this indenture witnesseth that the St. Louis, Hannibal & Keokuk Railroad Company, of the first part, in consideration of the premises and of one dollar hereby acknowledged, and in order to secure the payments of principal of said bonds as the same become due, has granted, bargained, and sold, and by these presents does grant, bargain, sell, and convey unto the said party of

the second part and to his successor, as continuing trustee, all its lines of railroad situated between the cities of Hannibal and St. Louis, in the State of Missouri, now constructed or hereafter to be constructed, and including all branches, tracks, right of way, all depot buildings, all depot grounds, cattle yards, station-houses, engine-houses, and other buildings, including all car, location, and machine shops, and all machinery and tools now held or hereafter to be acquired for use in connection with said railroad; also including all locomotives, tenders, cars, and all other rolling-stock and equipments of every description, together with all implements and materials for the construction, operating, or repairing of said railroad or any of its branches, and also all franchises connected with or relating to said railroad which are now held or may hereafter be acquired by the said party of the first part, and also all rights, claims, and benefits in and to all leases, contracts, and agreements now made or which may hereafter be made with any party whom-
33 soever, together with all and singular the tenements and appurtenances thereunto belonging, and all incomes and profits thereof, and also all the estate and interest whatsoever, as well at law as in equity of the said party of the first part.

To have and to hold the above-described property unto the said party of the second part and to his successor or continuing trustee in trust, nevertheless, for the purposes herein expressed and upon the following conditions, covenants, and agreements, to wit:

Article 1.

Until default be made in the payment of the principal of said bonds or some of them or until default shall be made in respect to something herein required to be done by the party of the first part, and until such default shall continue for six months after demand the said party of the first part shall be permitted to have and retain exclusive control and possession of the premises hereby conveyed, in the same manner and with the same effect as if this indenture had not been made.

Article 2.

In case of default in payment of principal or interest of said bonds or any part thereof when the same shall become due and payable according to the tenor and effect thereof and of the coupons thereunto attached or in any of the requirements to be performed by the party of the first part, it shall be lawful for the party of the second part, after six months from such default and demand for payment or performance, to take possession of said road and property, and, upon the written request of the holders of a majority in amount of the said bonds then issued and outstanding, it shall be the duty
34 of said trustee, in person or by his proper agents, to take possession of and manage said railroad and property and receive the income and profits thereof, and after deducting from the expenses of said road and of the management of said property and the needful repairs and all payment of taxes, together with a just compen-

sation for services, to apply the surplus of money so received to the payment of said bonds and interest thereon, ratably and without discrimination or preference, and said party of the second part is hereby authorized and required, upon the written request of the holders of a majority of said bonds then issued and outstanding, after such default shall have existed for one year, to cause said premises to be sold at public sale, in the city of St. Louis, giving at least sixty days' notice of the time and place of said sale, and of the specific property to be sold, by publishing the same in one newspaper in the city of New York and in one newspaper in the city of St. Louis, and to execute for the purchaser or purchasers thereof a good and sufficient conveyance in fee simple for the same, and which sale and conveyance shall be a perpetual bar against the said party of the first part and all persons claiming under it of all rights or claims, legal or equitable, in or to said premises or any part thereof, or said trustee may, in his discretion, inste-d of selling said road and property under the power of sale in this deed of trust, foreclose this deed of trust in the United States *supreme* court for the district of Missouri. In case resort is had to a foreclosure in court the said trustee shall, after deducting from the proceeds of said sale the costs
35 and expenses thereof and of the management of said property, apply so much of the proceeds as may be necessary for the payment of principal and interest of said bonds, and shall restore the residue thereof to the party of the first part.

Article 3.

And the party of the first part doth covenant and agree that it will well and truly pay the said bonds and the interest thereon according to the tenor thereof, and agrees that it will not at any time suffer or permit any lien against said property hereby conveyed or any part thereof, which may, by virtue of any law, take precedence over this deed of trust; and does further covenant and agree that it will permit no waste nor suffer any such to be committed on said railroad or property, nor do nor suffer to be done any act which shall materially injure the security of the holders of said bonds, and will not at any time take or in any manner use or avail itself of any injunction or stay of proceedings or any extension land valuation law, redemption law, or any other law which might in any way alter, impair, or change the rights and interests of the holders of said bonds, or which might in any way impede the mode or manner of realizing or enforcing the said rights or interests, or which might alter or affect the time, place, or manner of perfecting, enjoying, or enforcing any such rights or interests as the same are herein declared; and nothing herein shall prevent the party of the second part, upon such default as aforesaid in payment of the principal or interest of any of the said bonds, from adopting any
36 other legal or equitable remedy not herein specified for foreclosing this mortgage or collecting the amount which may *be* become due on such bonds; or if said party of the first part shall at any time suffer any lien, by judgment or otherwise, against said

property or any part thereof, or shall permit or suffer any waste to be committed by which said lien judgment or waste said property or any part thereof shall be impaired in value, it shall be the duty of said trustee to take such proceedings at law or in equity as shall be deemed necessary or advisable for the protection of the interests of the holders of said bonds.

Article 4.

And it is further covenanted by the party of the first part that the proceeds of said bonds shall be applied in good faith to the payment of all obligations incurred in the construction and equipment of said railroad and to the completion of the same; and the party of the first part further covenants with the party of the second part to make, execute, and deliver all such further instruments as shall from time to time be necessary and as the said trustee or his counsel shall reasonably advise or require for the better securing the said trustee, the said railroad property and appurtenances hereby mortgaged, and that at all times until said bonds shall be fully paid, with the interest due thereon, the party of the first part will permit the party of the second part, his agents or substitutes, freely to inspect all the books and papers of the said party of the first part.

Article 5.

37 It is hereby mutually agreed and these presents are upon the express condition that on the payment of the principal and interest of said bonds the estate hereby granted to the said party of the second part shall be void and the rights to the premises hereby conveyed shall revert and vest in the said party of the first part, in law and in fact, without any acknowledgment of satisfaction, reconveyance, or release, or other act, but said party of the second part or his successor shall, if so requested by the party of the first part, reconvey, release, and quitclaim to the said first party, its successors, or assigns all and singular the property hereinbefore mentioned.

Article 6.

It is also mutually agreed that the party of the second part shall be entitled to fair compensation for any services performed in the discharge of this trust, and shall only be required to exercise a reasonable discretion in the appointment of such agents as may be necessary in any capacity in and about the management of said road; and it is further mutually agreed that such bonds shall only be issued and that the said trustee shall only be required to certify to the same in the manner following: To the amount of twelve thousand dollars per mile for each and every mile of completed main line, provided that said bonds may be issued and sold or pledged for money, the proceeds to be received by the trustee and paid by him on the draft of the president to the order of the treasurer of the com-

pany, at the rate of twelve thousand dollars per mile, of bonds
38 for each mile of road in operation. Nothing herein contained shall be so construed as to require the payment of the proceeds of said bonds to the party of the first part, except upon every mile of main track made, to be certified and sworn to by the chief engineer.

Article 7.

And it is further agreed that it shall be lawful for the party of the first part, by and with the consent of the party of the second part, to sell and convey any land acquired or held for the purpose of stations, depots, or other buildings, or any lands or property which, in the judgment of the parties of the first and second parts, shall not be necessary for use in connection with said railroad or which may have been held for a supply of ties or fuel, gravel, or other material, or any land not occupied by the track or which may have become disused by reason of a change in the location of any station-houses, depot, shop, or other building connected with said railroad or of any portion of its track, and, with such consent or approval of the party of the second part, the president and the treasurer of the first part may make and deliver the conveyance necessary to carry such sale into effect, and the party of the first part may in like manner dispose of such portions of the equipments, machinery, and improvements at any time held or required for the use of said railroad as may have become unfit for use, replacing the same by new; but any lands or other property which may be acquired for permanent use in substitution for any so held shall be subject to the lien of this mortgage, and any surplus moneys which may arise by reason of such sale or changes shall apply
39 to the equipment of the road, if in the judgment of the parties both of first and second part it shall be necessary to do so, and the consent or approval herein referred to may be signified by the party of the second part in writing, which may be recorded in the office where the conveyance of any land or property to which the same relates shall be recorded, or the said second party may in like manner constitute an agent or agents for such purpose.

Article 8.

On the first day of August, 1889, and annually thereafter, the sum of five thousand dollars and an additional thousand dollars each year thereafter, so long as such increase may be necessary and adequate to redeem and retire all of such bonds by the time they mature, shall be reserved by the party of the first part and within sixty days thereafter be paid over to the trustee as a sinking fund for the redemption of the bonds secured by these presents.

The trustee shall at once deposit the surplus so paid over to him in the United States Trust Company of the city of New York or in some other depository in said city deemed by him to be safe; and the said moneys, together with all the accumulations of interest thereon which may actually come within the disposal of the said

trustee, shall be invested by him in the purchase of bonds secured by these presents, provided the same can be obtained at a rate not exceeding ten per cent. above the par of the said bonds, with the interest accrued thereon; and the bonds so purchased shall be deposited with the said trust company or other depository deemed by the trustee to be safe as aforesaid, and be immediately endorsed as belonging to the said sinking fund, but shall remain
40 in force, and the interest thereon shall continue to be paid by the said party of the first part, and the amount of such interest shall be added and applied as a part of the sinking fund hereby established and be invested in the purchase of other bonds, in the same manner as the annual payments above provided for; and preparatory to such purchase of bonds the said trustee shall give ten days' notice thereof in one of the daily newspapers published in the city of New York and to as many of said bondholders as can be conveniently reached, and shall make the said purchase at the lowest price or prices at which the bonds may be offered or at such lower price as he may be able to obtain the same, but not in any case exceeding the rate of ten per cent. above the par and interest of the said bonds; and in case the said bonds cannot be purchased at such a rate within three months after the expiration of the notice aforesaid, then the said money shall be invested in such a manner as the trustee may deem proper, providing, nevertheless, that it shall be at all times competent for the party of the first part and the holders of the bonds secured thereby, acting by a majority in interest, to enter into any new agreement which they may deem necessary or proper for the modification of the sinking fund hereby established.

Article 9.

It is agreed that the word "trustee" as used in these presents shall be construed to mean the trustee for the time being; and whereas any vacancy may be created a majority of the bondholders in interest shall have the power and right to appoint a successor, and
41 the acceptance of such appointment in writing shall immediately vest authority in such new trustee.

In witness whereof the party of the first part has hereunto set its corporate seal and caused these presents to be signed by its president, secretary, and treasurer, and the party of the second part has signed these presents in acceptance of the trust herein mentioned and created the day and year first above written.

[St. Louis, Hannibal & Keokuk R. R. Co. Seal.]

ST. LOUIS, HANNIBAL & KEOKUK
RAILROAD COMPANY,
By S. P. WISNER, *President.*
WM. BUCHANAN, *Secretary.*
JOHN F. ELY, *Treasurer.*
DE WITT C. BLAIR, *Trustee.*

STATE OF IOWA, } ss:
County of Linn, }

Be it remembered that on the 27th day of October, A. D. 1879, before me, Charles H. Clark, notary public in and for Linn county, in the State of Iowa, personally appeared at my office, in said county, S. P. Wisner, president of the St. Louis, Hannibal & Keokuk Railroad Company, and Wm. Buchanan, secretary of the same company, and John F. Ely, treasurer of the same company, to me respectively personally known to be such, who, being by me severally duly sworn, did depose and say that the said S. P. Wisner resided in Cedar Rapids, Iowa; that the said Wm. Buchanan resided in Cedar Rapids, Iowa, and the said John F. Ely resided in Cedar Rapids, Iowa; that the said S. P. Wisner was president, and the said Wm. Buchanan was the secretary, and the said John F. Ely was
42 the treasurer of the company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they, the said S. P. Wisner and Wm. Buchanan and John F. Ely, signed their names thereto by the like order as president and secretary and treasurer of said company, respectively, and the said S. P. Wisner, Wm. Buchanan, and John F. Ely, personally known to me to be the identical persons whose names are affixed to the foregoing instrument as such president and secretary and treasurer, acknowledged the same to me to be the free and voluntary act and deed of the said St. Louis, Hannibal & Keokuk Railroad Company, for the purposes mentioned therein.

In witness whereof I have hereunto set my hand and affixed my official seal this 27th day of October, A. D. 1879.

[Charles H. Clark, Notarial Seal, Iowa.]

CHARLES H. CLARK,
Notary Public in and for Linn County, Iowa.

STATE OF NEW JERSEY, } ss:
County of Warren, }

This is to certify that on this 12th day of November, A. D. 1879, before me, Charles E. Vail, notary public in and for Warren county, in the State of New Jersey, personally appeared De Witt C.
43 Blair, trustee, personally known to me to be the identical person whose name is affixed to the foregoing instrument as trustee, who acknowledged the same to be his voluntary act and deed as such trustee therein described.

In witness whereof I have hereunto set my hand and affixed my official seal this 12th day of November, A. D. 1879.

{ Seal of Charles E. Vail, Notary Public, Blairstown, New Jersey. }

CHARLES E. VAIL,
Notary Public.

This mortgage is executed in triplicate and the several copies marked, respectively, "original," "duplicate," and "triplicate." This copy is the original.

STATE OF MISSOURI, } ss:
County of Pike, }

I, Robert W. Unsell, recorder of deeds in and for the county aforesaid, hereby certify that the attached instrument of writing was filed for record on the 22nd day of November, A. D. 1879, at 8 o'clock 00 min. a. m., and is duly recorded in volume 58, at page 169, *et seq.*, of the deed of records of said Pike county.

Witness my hand and official seal, at office, in Bowling Green, this 22nd day of November, A. D. 1879.

[Seal of Recorder of Deeds, Pike Co., Missouri.]

ROBERT W. UNSELL, *Recorder.*
By —— ——, *Deputy.*

44 RECORDER'S OFFICE.

STATE OF MISSOURI, } ss:
County of St. Charles, }

I, John K. McDearmon, clerk of the county court and *ex officio* recorder of said county, do hereby certify that the annexed instrument of writing was, on the twentieth (20th) day of November, A. D. 1879, at 5.15 o'clock p. m., duly filed for record in this office and is truly recorded in Book No. 27, at page 116 and following.

Witness my hand and official seal the date aforesaid.

[Seal of the St. Charles Co. Court, Missouri.]

JOHN K. McDEARMOR,
Clerk & Recorder.
Per AUG. G. NAHN, *Deputy.*

STATE OF MISSOURI, } ss:
County of Ralls, }

IN THE RECORDER'S OFFICE.

I, James W. Lear, clerk of the circuit court and *ex officio* recorder of said county, do hereby certify that the annexed instrument of writing was, on the 6th day of December, A. D. 1879, at 10 o'clock 20 minutes a. m., duly filed for record in this office and is duly recorded in the records of this office in Book Railroad Conveyances, at page 262 and following.

Witness my hand as clerk and recorder and the seal of the said county, at my office, in New London, this 6th day of December, 1879.

[Seal of Ralls Co. Circuit Court, Missouri.]

JAMES W. LEAR,
Clerk & Recorder.

45 STATE OF MISSOURI, } ss:
County of Marion, }

IN THE RECORDER'S OFFICE.

I, Thomas W. Hawkins, clerk of the circuit court and *ex officio* recorder of said county, do hereby certify that the within instrument of writing, with the certificate of acknowledgement thereon, was, on the 8th day of December, 1879, at 12 o'clock and x minutes m, duly filed for record in this office, and is duly recorded in the records of this office in Deed Book, vol. 81, at pages 524–532.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Palmyra, this 8th day of December, 1879.

[Seal of the Circuit Court, Marion.]

THOMAS W. HAWKINS,
Clerk & ex Officio Recorder.

STATE OF MISSOURI, } ss:
County of Lincoln, }

IN THE RECORDER'S OFFICE.

I, William Calbert, recorder of deeds within and for the county aforesaid, do certify that the instrument of writing hereto attached, with the A. C. R. thereon, was filed for record in said office on the 22nd day of November, 1879, at 1 o'clock and 50 minutes p. m., and that the same is duly recorded in said office in Book 13, for recording conveyance, at page 164.

In witness whereof I have hereto set my hand and affixed the seal of my said office.

46 Done at office, at Troy, this 22nd day of November, 1879.

[Seal of the Circuit Court, Lincoln County, 1879.]

WM. CALBERT.
J. W. CALBERT,
D. Recorder.

EXHIBIT B.

Form of Bond.

UNITED STATES OF AMERICA.

St. Louis, Hannibal & Keokuk Railroad Company first-mortgage convertible bond—interest at seven per cent., payable semi-annually.

The St. Louis, Hannibal and Keokuk Railroad Company hereby acknowledges itself to owe De Witt Clinton Blair or bearer the sum of one thousand dollars, to be paid at the agency of the company in the city of New York on the first day of October, one thousand nine hundred and seventeen, with interest from the first day of October, 1877, at the rate of seven per centum per annum, on the first days of April and October in each year, until the said principal shall be fully paid, on the presentation of the annexed coupons as they re-

spectively become due. This bond is one of a series of twelve hundred, numbered from one to twelve hundred, inclusively, and each for one thousand dollars; eight hundred bonds, from one to eight hundred, inclusively, and each for one hundred dollars, all
47 of the same form, excepting the amount, and in the aggregate amounting to sixteen hundred and eighty thousand dollars, and all of even date herewith, secured by a deed of trust to the said De Witt Clinton Blair, bearing the same date as this bond and conveying to the said trustee all the railroad of this company in the State of Missouri, situated and located between the city of St. Louis and the city of Hannibal, in the State of Missouri, and all the other property, rights, and franchises described in the said deed of trust.

It is hereby expressly agreed by the said railroad company with each and every holder of this bond that in case of the non-payment of any interest coupons hereto attached, if such default shall continue for six months after maturity and demand of payment, or in case of the non-payment of any installment required to be paid into the sinking fund provided by the said deed of trust, then and in either case the principal of this bond shall become due in the manner provided for in the deed of trust; and the said company hereby expressly waives the benefit of every extension, stay, or appraisement law which has been or may hereafter be enacted.

Any holder of this bond may at any time within ten years of its date have the same converted into the capital stock of the said company and be entitled to receive therefor ten shares of said capital stock on the surrender of this bond, with all the unpaid coupons thereto annexed.

48 This bond shall not become obligatory unless the certificate endorsed hereon is signed by the trustee.

In witness whereof the said party of the first part has caused its corporate seal to be hereto affixed and these presents to be signed by its president, secretary, and treasurer on the first day of August, A. D. 1877.

(Signed) S. P. WISNER, *President.*
(Signed) WM. BUCHANAN, *Secretary.*
(Signed) JOHN F. ELY, *Treasurer.*

49 *Answer to the Bill of Complaint.*

In the Circuit Court of the United States for the Eastern District of Missouri.

DE WITT C. BLAIR, Trustee, Complainant,
vs.
THE ST. LOUIS, HANNIBAL AND KEOKUK RAILROAD COMPANY, JOSIAH FOGG, and Others, Defendants. } In Equity.

The answer of Josiah Fogg, one of the defendants, to the bill of complaint of De Witt C. Blair, trustee, complainant.

This defendant, now and at all times hereafter saving and re-

serving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereto or so much thereof as this defendant is advised it is material for him to make answer to, answering, saith that it is true that the St. Louis, Hannibal and Keokuk Railroad Company was incorporated and chartered under certain articles of association by the persons, in the manner, and under the circumstances hereinafter stated; but whether said St. Louis, Hannibal and Keokuk Railroad
51 Company had or possessed the powers as alleged in the complainant's bill this defendant does not know and he is not advised save by the said complainant's said bill, and he submits to this honorable court the proper construction of said articles of association and the powers possessed by said St. Louis, Hannibal and Keokuk Railroad Company thereunder.

That this defendant has no knowledge as to whether said St. Louis, Hannibal and Keokuk Railroad Company did execute, acknowledge, and deliver to the complainant the instrument in writing described in said bill and therein claimed to be a mortgage or deed of trust of the tenor alleged; but this defendant, since the commencement of this suit, has heard of said instrument of writing and has seen what is alleged in said bill to be a copy thereof and of the certificate of acknowledgment thereof filed with said bill and prayed to be taken as a part thereof; and this defendant is advised and believes that if the certificate of acknowledgment attached to said instrument of writing be in the form attached to said copy that it is not acknowledged according to the statutes of Missouri in such cases made and provided so as to entitle said instrument of writing to be recorded, and if it was recorded, as alleged in said bill, the recording thereof was done without any authority of law. Said record does not impart any legal or even constructive notice of the contents of said instrument of writing to this defendant, and he is not bound by it.

And this defendant, further answering, says that he has been informed and he believes it to be true that said St. Louis, Hannibal and Keokuk Railroad Company did deliver to John I. Blair
53 and Moses Taylor certain of its bonds, but as to the amount thereof or the time when they were delivered, except as hereinafter stated on information, this defendant has no knowledge or information sufficient to form a belief, and demands strict proof thereof.

This defendant denies that the railroad and its appurtenances and equipments, as described in said bill, are but a slender and scanty and wholly insufficient security for the bonds and coupons issued by said St. Louis, Hannibal and Keokuk Railroad Company and ascribed in said bill. On the contrary, this defendant, upon information and belief, says that if said railroad and its appurtenances and equipments were operated with care, economy, and skill that it could earn money enough, after paying the necessary expenses for operating and keeping it in repair, to pay not only the interest upon all bonds issued by it as said interest fell due, but likewise pay this

defendant the amount of his decree hereinafter described as well as all the floating debts of said St. Louis, Hannibal and Keokuk Railroad Company, and be and become a valuable property to the stockholders thereof; that, upon information and belief, this defendant says that the plaintiff's suit herein is a plan and scheme upon the part of said John I. Blair and other holders of said bonds to obtain a decree of foreclosure of said mortgage and sell said railroad and its appurtenances and equipments thereunder for the purpose of wrecking said company, buying in said railroad and appurtenances and equipments at a price greatly below their real value and become the sole owner thereof, and in this way prevent the defendant and the other creditors of said company from collecting their just debts against said company.

55 The defendant says that he has never heard or been informed save by the complainant's bill whether judgments have been rendered against said St. Louis, Hannibal and Keokuk Railroad Company in favor of the persons named other than this defendant and to the amounts stated; but this defendant believes that judgments have been rendered against said company, as is in said bill alleged, and he believes the same is true in regard to the floating indebtedness of said company.

This defendant denies that the interest upon which his decree against said St. Louis, Hannibal and Keokuk Railroad Company was rendered, as hereinafter stated, accrued long subsequent to the lien of the pretended mortgage or deed of trust described in said bill, or that it is junior or subordinate thereto, as alleged in said bill; and this defendant, further answering, denies that said St. Louis, Hannibal and Keokuk Railroad Company is or has been insolvent for a long space of time, as alleged in said bill, or that it is insolvent at all, but, upon information and belief, he says that the stockholders in said company have never paid for the stock issued to them; that said John I. Blair owns and holds certificates of full-paid stock in said company. The par value thereof amounts to $100 per share, for which he never paid any money or other thing of value, and he still owes said company therefor, and said Moses Taylor owned and held at the time of his death and the executors of his last will still own and hold certificates of full-paid stock in the same. The par value thereof amounts to $100 per share, for which neither said Taylor in his lifetime nor his said executors since his death

57 have ever paid any money or other thing of value, and the estate of said Taylor still owes said company therefor; that the said Blair & Taylor held stock and still hold it in said company in the aggregate of 8,520 shares; that if Blair and Taylor's executors were to pay for the stock held by them alone there would be money enough realized therefrom to pay not only all the bonds held by them and the interest thereon, but also money enough to pay this defendant and all creditors of said St. Louis, Hannibal and Keokuk Railroad Company.

This defendant states that the St. Louis and Keokuk Railroad Company was duly incorporated and organized under and pursuan to an act of the General Assembly of the State of Missouri entitled

"An act to incorporate the St. Louis and Keokuk Railroad Company," approved on the 16th day of February, 1857; that under said charter said St. Louis and Keokuk Railroad Company was authorized to mark out, locate, and construct a railroad from some suitable point on the North Missouri railroad not exceeding thirty miles west of Saint Charles, in St. Charles county, Missouri, by the the way of Louisiana, in Pike county; Hannibal, in Marion county; Canton and La Grange, in Lewis county, Missouri, to some point near the mouth of the Des Moines river, on the northern boundary of the State of Missouri; that between the 1st day of January, 1869, and the 4th day of May, 1870, said St. Louis and Keokuk Railroad Company located and marked out the St. Louis and Keokuk railroad between said initial points, to wit, between what is now called Gilmore, on the St. Louis, Wabash and Pacific railroad, but at the time of making said location it was on the North Missouri railroad,
59 not exceeding thirty miles west of St. Charles, in St. Charles county, and Alexandria, in Missouri, at or near the mouth of the Des Moines river, on the northern boundary of said State; and between the 4th day of May, 1870, and the 4th day of March, 1873, said St. Louis and Keokuk Railroad Company graded and completed said railroad, as it had previously located and marked out the same, from the fair grounds near Hannibal to Frankfort, in Pike county, a distance of eighteen miles, and it did a large amount of grading in the county of Lincoln upon its said railroad as it had located and marked out the same; that in grading and completing said railroad between the fair grounds near Hannibal and Frankfort, in Pike county, and in the grading of said railroad in Lincoln county as aforesaid said St. Louis and Keokuk Railroad Company laid out and expended a large amount of money; and, upon information and belief, this defendant says that the sum of money so laid out and expended by said St. Louis and Keokuk Railroad Company was $600,000.00.

That on the 22nd day of September, 1870, this defendant and said St. Louis and Keokuk Railroad Company had a full and final settlement of all claims and demands which he had against said company, and upon said settlement said company was found to owe and be indebted to him, among other claims, the sum of $9,547.75 for labor done and money furnished in the location and construction of said railroad between said fair grounds near Hannibal and Frankfort, in Pike county, and in the location and grading done on said railroad in the county of Lincoln as aforesaid.

Afterwards, to wit, on the 3rd day of June, 1872, without paying said debt to this defendant, George Green, Wm. W. Walker,
61 Geo. Douglass, John F. Ely, Wm. Buchanan, John W. Barrett, W. Perkins, D. T. Waddy, S. R. Wolfolk, N. S. Dimmit, W. B. Elliott, S. J. Reynold, & Jas. D. Pitt, being the directors and constituting the managing and controlling force of said St. Louis and Keokuk Railroad Company, entered into articles of association and organized a railroad corporation under the general statute of the State of Missouri under the name of the St. Louis, Hannibal and Keokuk Railroad Company for the ostensible purpose of building

a railroad between the points named in the charter of said St. Louis and Keokuk Railroad Company and over the same ground most of the way upon which the said St. Louis and Keokuk Railroad Company had located, marked out, and built a portion of its railroad as aforesaid; but the real intention in entering into and organizing said new railroad corporation was, among other things, to keep this defendant and other creditors of said St. Louis and Keokuk Railroad Company from collecting their just debts from said company; that said new corporation was composed almost entirely of the same stockholders and directors and had the same executive officers as said old corporation.

That the stockholders never paid on the stock issued to them; that it had no capital; that it was formed and organized for the express purpose of absorbing said old corporation, getting possession and control of all its property of every kind and description without paying therefor, and carrying out a scheme to locate and construct its railroad from Frankfort, in Pike county, by way of Bowling Green, the county-seat of Pike county, to the southern part of said county instead of building its railroad by way of Louisiana, in Pike county; that at the time of organizing said new corporation
63 as aforesaid said old corporation had, in addition to the completed portion of its railroad and the grading done thereon in Lincoln county as aforesaid, some unpaid subscriptions made by Ralls and Lincoln counties to the capital stock thereof; that said old corporation owed a large amount of debts, but its property and choses in action which it owned at the time of assigning and transferring said property and choses in action, as hereinafter stated, largely exceeded in value the amount of said debts; that said property of every kind and unpaid subscriptions were reasonably worth the sum of $700,000; that it was part of the scheme of said managing and controlling force of said old corporation to place all its property of every description out of the reach of its creditors. With these objects in view said directors and officers of said old corporation caused it in proper form, on the 4th day of March, 1873, to execute and deliver a deed to said new corporation, whereby it pretended to assign, transfer, and set over to said new corporation all its property of every kind and description for the mere nominal consideration of shares of stock in said new corporation, which had no value.

That under said deed of assignment said new corporation ostensibly entered into posession of said completed portion of said St. Louis and Keokuk railroad, extending from the fair grounds near Hannibal to Frankfort, in Pike county, Missouri, and also said uncompleted grading in Lincoln county, Missouri, and all its other property of every kind, including said unpaid subscriptions of Ralls and Lincoln counties, and has been in possession thereof ever since and still is in possession thereof, enjoying the rents, earnings, and income therefrom, although really
it was and is said old corporation in possession under the
65 name of said new corporation; that said new corporation knew of the debt due and owing to this defendant, as herein-

before stated; that said assignment and transfer were made in fraud of this defendant's rights; that they were made subject to the payment of all debts of said old corporation; that said new corporation is to all intents and purposes the said old corporation under the name of the said new corporation; that said new corporation keeps up the organization of said old corporation, and it elects the same persons, or nearly all the same persons, for the directors and officers of said old corporation as it does for said new corporation; that said very deed of assignment was signed by the same persons as officers in said old as well as said new corporation; that said new corporation took all of said property of said old corporation with full knowledge and notice of said debt which said old corporation was owing to this defendant as aforesaid; that said debt was unpaid; that said new corporation paid nothing of value for said property assigned and transferred to it as aforesaid, and it has ever since said assignment and transfer held and it still holds said property subject to the payment of this defendant's said debt, which has been merged into a judgment, as hereinafter stated.

This defendant avers that by reason of the premises said old corporation could not assign and transfer all of its said property to said new corporation; that said assignment and transfer were beyond the powers of said old corporation, and were and are null and void as to this defendant and other creditors of said old corporation; that said new corporation, by accepting said deed of assignment and
67 transfer and entering into possession of said property and receiving the rents, earnings, and income therefrom as aforesaid without paying said debt of this defendant, made itself a trustee for this defendant as well as for all other creditors of said old corporation.

Afterwards, to wit, on the 21st day of September, 1880, this defendant commenced an action at law in this court against both said old and new corporations on said debt due and owing to him by said old corporation as aforesaid to recover judgment thereon; but upon a trial (which resulted in a mistrial) of said action at the September term, 1881, of this court it held and decided that this defendant could not recover on said debt against said new corporation, and thereupon said action as to said new corporation was dismissed. There was a second trial of said action against said old corporation on the 3d day of October, 1882, which resulted in this defendant's recovering judgment on said debt against said old corporation for the sum of $16,439.63 and costs; and on the 18th day of January, 1883, an execution was issued on said judgment in favor of this defendant and against said St. Louis and Keokuk Railroad Company to the marshal of this district, returnable to the March term, 1883, of this court, and said execution was returned by said marshal at said term that no property of said old corporation could be found whereon to levy said execution, and it was returned unsatisfied.

Afterwards, to wit, on the 3rd day of May, 1883, this defendant filed his bill in equity against both said old and new corporations in this honorable court to recover the amount of said judg-
69 ment, interest, and costs from said new corporation and to

have the same declared a first lien on said property assigned and transferred to said new corporation by said old corporation as aforesaid, and in said bill the facts hereinbefore stated were alleged as the ground upon which this defendant sought to recover.

And upon issue joined and testimony taken on the part of this defendant as well as upon the part of said new corporation, said old corporation not contesting said judgment, and a full hearing of said bill, answer, and replication and proofs by this honorable court, and the argument of counsel, and after full and mature consideration of said cause, it, on the 5th day of May, 1884, rendered a final decree in favor of this defendant and against said new as well as against said old corporation for the full amount of said judgment, interest, and costs, to wit, for the sum of $18,365.11, and said decree still stands in full force, not appealed from, and unreversed and unsatisfied.

This defendant, upon further information and belief, says that the plaintiff, as trustee for John I. Blair and Moses Taylor's executors, took the bonds described in his said bill with full notice of this defendant's said debt and claim against said old corporation, and that said debt was unpaid, and also of his said claim against the property assigned and transferred by said old corporation to said new corporation, as hereinbefore stated, and that said property was and is subject to the payment of said debt and judgment thereon before said John I. Blair and said executors of Moses Taylor have or can have any lien or claim in equity thereon for the payment of
71 the bonds in question held by them or either of them.

And this defendant further says, upon information and belief, that both said John I. Blair and Moses Taylor took said bonds or at least the greater part of said bonds after this defendant had commenced his said action at law in this court against both said old and new corporations to recover judgment on said debt, and they took said bonds with full notice that said debt was wholly unpaid, and that said old corporation had no power to assign and transfer all of its said property to said new corporation; that said assignment and transfer were and are null and void, and that said new corporation took and now holds said property as a trustee for the payment of this defendant's said debt and other creditors of said old corporation.

This defendant, further answering, says that said John I. Blair and Moses Taylor during his lifetime and his executors since his death have consented and have allowed said St. Louis, Hannibal and Keokuk Railroad Company to continue and remain in possession of said St. Louis, Hannibal and Keokuk railroad, and to operate the same from the time of making the instrument of writing described in said bill, and to receive and appropriate the income and earnings of said railroad to the building and improving thereof instead of applying said income and earnings to the payment of the interest on the bonds held by said Blair and Taylor's executors as it matured and became payable, and thereby enhanced the value of said railroad as a security for the payment of said bonds and interest.

This defendant avers that by means of the premises he has
73 a right and lien upon said property assigned and transferred to said new corporation by said old corporation as aforesaid and to the income and earnings of said railroad to the amount of said decree and costs prior and paramount to the plaintiff as trustee for John I. Blair and said executors of Moses Taylor, deceased. He therefore sets up and pleads the facts stated in this answer as a full and complete defence to plaintiff's right to a lien on the property assigned and transferred by the said old corporation to said new corporation as aforesaid, and also to the income and earnings of said railroad during the period aforesaid until this defendant's said decree and costs shall have been fully paid and satisfied; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and he humbly prays to be dismissed with his reasonable costs and changes in this behalf most wrongfully sustained.

GEO. D. REYNOLDS,
Sol'r for Defendant.

JAMES CARR, *Of Counsel.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

Josiah Fogg makes oath and says that he has read the fore-
75 going answer, and states that the facts therein stated are true of his own knowledge except as to the matters that are therein stated to be upon information and belief, and as to those matters he believes them to be true as stated.

JOSIAH FOGG.

Subscribed and sworn to before me this 7th day of July, A. D. 1884.

[SEAL.] THOS. L. CRAWFORD,
Notary Public.

77 *Cross-Bill of Fogg.*

In the Circuit Court of the United States for the Eastern District of Missouri.

JOSIAH FOGG, Complainant,
vs.
DE WITT C. BLAIR, Trustee, Defendant. } In Equity.

To the judges of the circuit court of the United States for the eastern district of Missouri:

Your orator, Josiah Fogg, a citizen of the State of Colorado, brings this his cross-bill of complaint against De Witt C. Blair, trustee, under and by virtue of a certain instrument of writing executed by the St. Louis, Hannibal & Keokuk Railroad Company, a corporation organized under the laws of the State of Missouri, as hereinafter stated.

Humbly complaining, shows unto your honors that the St. Louis & Keokuk Railroad Company was duly incorporated and organized under and pursuant to an act of the General Assembly of the State of Missouri entitled "An act to incorporate the St. Louis and Keokuk Railroad Company," approved on the 16th day of February,
79 1857; that under said charter said St. Louis & Keokuk Railroad Company was authorized to mark out, locate, and construct a railroad from some suitable point on the North Missouri railroad, not exceeding thirty miles west of St. Charles, in St. Charles county, Missouri, by way of Louisiana, in Pike county; Hannibal, in Marion county; Canton & La Grange, in Lewis county, Missouri, to some point near the mouth of the Des Moines river, on the northern boundary of the State of Missouri; that between the 1st day of January, 1869, and 4th day of May, 1870, said St. Louis and Keokuk Railroad Company located and marked out the St. Louis and Keokuk railroad between said initial points, to wit, between what is now called Gilmore, on the St. Louis, Wabash & Pacific railroad, but at the time of making said location it was on the North Missouri railroad, not exceeding thirty miles west of St. Charles, in St. Charles county, and Alexandria, in Missouri, at or near the mouth of the Des Moines river, on the northern boundary of said State, and between the 4th day of May, 1870, and the 4th day of March, 1873, said St. Louis & Keokuk Railroad Company graded and completed said railroad, as it had previously located and marked out the same, from the fair grounds near Hannibal to Frankfort, in Pike county, a distance of eighteen miles, and it did a large amount of grading in the county of Lincoln upon its said railroad as it had marked out and located the same; that in grading and completing said railroad between the fair grounds near Hannibal and Frankfort, in Pike county, and in the grading of said railroad in Lincoln county
81 as aforesaid said St Louis and Keokuk Railroad Company laid out and expended a large amount of money; and, upon information and belief, this complainant says the sum of money so laid out and expended by said St. Louis and Keokuk Railroad Company was $600,000.00.

That on the 22nd day of September, 1870, this complainant and said St. Louis and Keokuk Railroad Company had a full and final settlement of all claims and demands which he had against said company and which said company had against him, and upon said settlement said company was found to owe and be indebted to him, among other claims, the sum of $9,547.75 for labor done and money furnished in the location and construction of said railroad, to wit, the St. Louis and Keokuk railroad, between said fair grounds near Hannibal, and Frankfort, in Pike county, and in the location, grading done on said railroad in the county of Lincoln as aforesaid.

Afterwards, to wit, on the 3rd day of June, 1870, without paying said debt to this complainant, George Greene, W. W. Walker, George Douglass, John F. Ely, William Buchanan, John W. Barrett, Walton Perkins, D. T. Waddy, S. R. Woolfolk, N. S. Dimmitt, W. B. Elliott, S. J. Reynolds, and James D. Pitt, being stockholders and directors

and constituting the managing and controlling force of said St. Louis & Keokuk Railroad Company, entered into articles of association and organized a railroad corporation under the general statutes of the State of Missouri, under the name of the St. Louis, Hannibal & Keokuk Railroad Company, for the ostensible purpose of building a railroad between the points named in the charter of the said St. Louis and Keokuk Railroad Company and over the
83 same ground most of the way upon which the said St. Louis and Keokuk Railroad Company had located, marked out, and built a portion of its railroad as aforesaid; that said new corporation was composed almost entirely of the same stockholders and directors and had the same executive officers as said old corporation; that the stockholders in said new corporation never paid anything on the stock issued therein to them; that it had no capital; that it was formed and organized for the purpose of absorbing said old corporation, getting possession and control of all of the property of every kind and description of said old corporation without paying therefor and without paying the debts of said old corporation, and carrying out a scheme to locate and construct its railroad from Frankfort, in Pike county, by way of Bowling Green, the county-seat of Pike county, to the southern part of said county instead of building its railroad by way of Louisiana, in Pike county, as required by its charter; that at the time of organizing said new corporation as aforesaid said old corporation had, in addition to the completed portion of its railroad and the grading done thereon in Lincoln county as aforesaid, some unpaid subscriptions made by Ralls and Lincoln counties to the capital stock thereof, said unpaid subscriptions amounting to the sum of about $42,000.00, which said new corporation afterward collected and appropriated to the payment of debts incurred in building of its railroad, to wit, the St. Louis, Hannibal and Keokuk railroad; that said old corporation owed a large amount of debts, but its property and
85 choses in action which it owned at the time of assigning and transferring its property and choses in action, as hereinafter stated, largely exceeded in value the amount of said debts; that said property of every kind and unpaid subscriptions at the time of making said assignment and transfer, as herein stated, were reasonably worth the sum of about $700,000.00; that it was part of the scheme of said managing and controlling force of said old corporation to place all its property of every description out of the reach of its creditors; that in doing so said old corporation, after said settlement with this complainant as aforesaid, always regarded and treated said claim of this complainant as a just and valid debt due from it to this complainant, and in making the assignment and transfer of all its property of every kind as aforesaid to said new corporation it expressly stipulated and required said new corporation to assume the payment of said debt, among others, to this complainant, and said new corporation did expressly assume the payment of said debt to this complainant and recognized and treated said debt at the time of said assignment and transfer as aforesaid and a long time thereafter as a valid and just debt and a proper

charge upon the property assigned and transferred to it as aforesaid, and that plaintiff had a valid and subsisting lien on said property for the payment of said debt superior and paramount to the defendant and those for whom the defendant is and has been acting as trustee under the mortgage or deed of trust described in the defendant's bill filed in this court on the 6th day of February, 1884, against this complainant and others to foreclose said mortgage or deed of trust.

87 With these objects in view said officers and directors of said old corporation caused it in proper form, on the 4th day of March, 1873, to execute and deliver a deed to said new corporation, whereby it pretended to assign, transfer, and set over to said new corporation its property of every kind and description for the mere nominal consideration of shares of stock in said new corporation, which had no value, and the assumption of the obligations of the old company then existing.

That under said deed of assignment said new corporation ostensibly entered into possession of said completed portion of said St. Louis & Keokuk railroad, extending from the fair grounds near Hannibal to Frankfort, in Pike county, Missouri, and also said uncompleted grading in Lincoln county, Missouri, and all its other property of every kind, including said unpaid subscriptions of Ralls and Lincoln counties, and continued in possession ever since, until possession was taken by the receiver of this court under the order thereof made 7th day of February, 1884, in the case wherein the defendant, De Witt C. Blair, is complainant and this complainant and others are defendants, receiving and appropriating the earnings and income therefrom, although really it was and is said old corporation in possession under the name of said new corporation; that said assignment and transfer were made in fraud of this complainant's rights; that they were made subject to the payment of said debt due from said old corporation to this complainant; that said new corporation is to all intents and purposes the said old corporation under the name of the said new corporation; that said new corpora-

89 tion keeps up the organization of said old corporation, and it elects the same persons or nearly the same persons for the officers and directors of said old corporation as it does for said new corporation, and said old corporation is entirely under the control of said new corporation; that said very deed of assignment was signed by the same persons as officers in each of said corporations; that said new corporation took all of said property of said old corporation with full knowledge and notice of said debt which said old corporation was owing to this complainant as aforesaid; that said debt was unpaid; that said new corporation paid nothing of value for said property assigned and transferred to it as aforesaid, and it has ever since said assignment and transfer held and said receiver still holds said property subject to the lien of this complainant thereon for the payment of this complainant's judgment and decree, as hereinafter stated.

This complainant avers that by reason of the premises said old corporation could not assign and transfer all of its said property to

said new corporation; that said assignment and transfer were beyond the powers of said old corporation and were and are null and void as to this complainant and other creditors of said old corporation; that said new corporation, by accepting said deed of assignment and transfer and entering into possession of said property and receiving the earnings and income therefrom as aforesaid without paying said debt due from said old corporation to this complainant, made itself a trustee for this complainant as well as for all other creditors of said old corporation.

91 Afterwards, to wit, on the 21st day of September, 1880, this complainant commenced an action at law in this court against both said old and new corporations on said debt due and owing to him by said old corporation as aforesaid to recover judgment thereon, but upon the trial—which resulted in a mistrial—of said action at the September term, 1881, of this court, it held and decided that this complainant could not recover on said debt against said new corporation; thereupon said action as to said new corporation was dismissed. There was a second trial of said action against said old corporation on the 3rd day of October, 1882, which resulted in this complainant's recovering judgment on said debt against said old corporation for the sum of $16,439.63 and costs; and on the 18th day of January, 1883, an execution was issued on said judgment in favor of this complainant and against said St. Louis and Keokuk Railroad Company to the marshal of this district, returnable to the March term, 1883, of this court, and said execution was returned by said marshal at said term; that no property of said old corporation could be found whereon to levy said execution, and it was returned unsatisfied.

Afterwards, to wit, 3rd of May, 1883, this complainant filed his bill in equity against both said old and new corporations in this honorable court to recover the amount of said judgment, interest, and costs from said new corporation, and to have the same declared a first lien on said property, assigned and transferred to said new corporation by said old corporation as aforesaid, and in said bill

93 the facts hereinbefore stated were alleged as the ground upon which this defendant sought to recover, and upon issue joined and testimony taken upon the part of this complainant as well as upon the part of said new corporation, said old corporation not contesting said judgment and a full hearing of said bill and said new corporation's answer thereto and this complainant's replication to said answer and proofs before this honorable court, and after mature and full consideration of said cause it, on the 5th day of May, 1884, rendered a final decree in favor of this complainant and against said new as well as against said old corporation for the full amount of said judgment, interest, and costs, to wit, the sum of $18,365.11 and costs, and said decree still stands in full force, not appealed from, not reversed, and not satisfied.

This complainant, upon further information and belief, says that the defendant, as trustee for John I. Blair and Moses Taylor's executors, took the bonds described in his said bill with full notice of this complainant's said claim against said old corporation, and that

said claim was wholly unpaid and unsatisfied, and said defendant also took said bonds with full notice of his said claim against and lien upon the property assigned and transferred by said old corporation to said new corporation as herein stated, and that said property was and is subject to the payment of the said debt and the judgment rendered thereon before John I. Blair and said executors of Moses Taylor have or can have any lien or claim in equity thereon for the payment of the bonds in question held by them or either of them;

95 and this complainant further says, upon information and belief, that said John I. Blair and Moses Taylor took said bonds or at least the greater part of said bonds after this complainant had commenced his action at law in this court against both said old and new corporations to recover judgment on said debt, and they and each of them took said bonds with full notice that said debt was wholly unpaid and that said old corporation had no power to assign all of its said property to said new corporation; that said assignment and transfer were and are null and void, and that said new corporation took and held said property in trust for the payment of this complainant's said claim, and that this complainant had and still has a lien on said property for the payment of his claim.

This complainant further says, upon information and belief, that said defendant as trustee, said John I. Blair, and Moses Taylor during his lifetime and his executors since his death, have consented and allowed said St. Louis, Hannibal & Keokuk Railroad Company to continue and remain in possession of said St. Louis, Hannibal and Keokuk railroad, and to operate the same from the time of making the instrument of writing described in said bill, and to receive and appropriate the income and earnings of said railroad to the building and improving thereof, instead of applying said income and earnings to the payment of the interest on the bonds held by said Blair and Taylor's executors as it matured and became payable, and thereby enhanced the value of said railroad as security for said bonds and interest.

97 This complainant, upon information and belief, says that the suit commenced by said De Witt C. Blair as trustee for said John I. Blair & Moses Taylor's executors and other unnamed bondholders of said St. Louis, Hannibal & Keokuk Railroad Company against this complainant and others in this court in which this cross-bill is now here filed to foreclose the mortgage or deed of trust therein described, was and is a scheme designed and intended to cut out and prevent this complainant from enforcing his said lien and collecting the amount of his said decree against said old corporation as well as said new corporation, and to have said St. Louis, Hannibal & Keokuk railroad and all its appurtenances and equipments sold under a decree of foreclosure of said mortgage or deed of trust, and at such sale said John I. Blair, himself or for himself and said executors of Moses Taylor, design and intend to buy in said railroad and its appurtenances and equipments at a price and sum greatly under thier actual real value.

That said suit, upon information and belief, this complainant

says, is a collusive suit between said defendant, De Witt C. Blair, as trustee for said John I. Blair, and the executors of Moses Taylor and the managers of said St. Louis, Hannibal and Keokuk Railroad Company, purposely designed and intended to prevent this complainant from asserting and enforcing his said decree against said old as well as said new corporation, and enforcing his lien upon and against said property assigned and transferred by said old corporation to said new corporation.

99 This complainant further says, upon information and belief, that said John I. Blair owns & holds 4,240 shares of capital stock in said St. Louis, Hannibal and Keokuk Railroad Co., the par value of which is $100 per share, upon which he has never paid anything, and for which he owes and is indebted to said St. Louis, Hannibal and Keokuk Railroad Company; that said executors of Moses Taylor own and hold 4,280 shares in the capital stock of said St. Louis, Hannibal & Keokuk Railroad Company, the par value of which is $100 per share, and upon which neither said Taylor in his lifetime or his executors since his death have ever paid anything; that said De Witt C. Blair is a member of the board of directors of the said St. Louis, Hannibal & Keokuk Railroad Company, and has been for several years, and was with others placed in said directory by said Blair & Taylor, and that said Blair & Taylor have for a number of years been actively participating in the management of said company and its affairs through said D. C. Blair and other directors of said company.

That if said Blair & Taylor were to pay what they owe upon said stock said company would have been able to pay not only all interest upon all bonds outstanding but have a large surplus; but that said Blair and Taylor and said De Witt C. Blair have prevented any call on said Blair and Taylor for payment of said stock, and from the application of the revenues of the road to its indebtedness. And this complainant insists that before the said mortgage is foreclosed the said Blair and the executors of said Taylor, represented by said D. C. Blair as trustee, should be required to pay for the stock

101 received and held by them. In consideration of the premises, and inasmuch as your orator has no sufficient remedy save in your honor's court of equity where matters of this kind are relievably and cognizable, your orator prays that the said De Witt C. Blair may be required to answer all and singular the premises aforesaid fully and particularly. Your orator prays that said De Witt C. Blair be enjoined from further proceeding with said foreclosure suit until said Blair and the executors of Taylor pay over and account for the value of said stock; that the debt of said railroad companies to this complainant be decreed a lien on the assets prior and superior to said mortgage; that the receiver heretofore appointed be required to sell said railroad, and out of the proceeds to pay after the costs, etc., first the amount of this complainant's said decree and interest thereon, and the costs therein adjudged in favor of this complainant against said St. Louis, Hannibal & Keokuk Railroad Company and said St. Louis & Keokuk Railroad Company, and that your orator may have

such other and further relief in the premises as the nature of his case shall require and to your honors shall seem meet.

May it please your honors to grant unto your orator the writ of subpœna, to be directed to the said De Witt C. Blair, therein and thereby commanding said Blair at a certain time and under a certain penalty therein to be inserted, personally to be and appear before your honors in this honorable court, and then and there full, true, direct, & perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order
103 direction, and decree therein as this honorable court shall deem most meet; and your orator will ever pray, &c.

GEO. D. REYNOLDS,
Solicitor for Comp't.

JAMES CARR, *Of Counsel.*

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

Josiah Fogg makes oath and says that he has read the foregoing cross-bill, and states that the facts therein are true of his own knowledge, except as to the matters that are therein stated to be on information & belief, and as to those matters he believes them to be true as stated.

JOSIAH FOGG.

Subscribed and sworn to before me the 7th day of July, 1884.
[SEAL.] THOS. L. CRAWFORD,
Notary Public.

105 And afterwards, to wit, on the first day of December, A. D. 1884, the following answer of De Witt C. Blair to cross-bill was filed in said cause, to wit:

Answer to Cross-Bill.

In the Circuit Court of the United States for the Eastern District of Missouri.

DE WITT C. BLAIR, Trustee, Complainant,
vs.
JOSIAH FOGG, *et als.*, Defendants. } In Chancery.

The answer of De Witt C. Blair, trustee, one of the defendants, to the cross-bill of Josiah Fogg, complainant in said cross-bill.

This defendant now and at all times saving and reserving unto himself all and all manner of benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill contained for answer thereunto, or unto so much and such parts thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, says:

That as to the incorporation of the St. Louis and Keokuk Railroad Company, as alleged in said cross-bill, this defendant has no information or knowledge sufficient to warrant a belief, and calls for strict proof of the same, and as to the laying out of the line of said company as alleged in said cross-bill this defendant is not informed and calls for strict proof of the same, and as to the statement of the claim of said complainant against said company and the amount of said complainant's claim to be due him from said company this defendant is not informed, and calls for strict proof of the same; and as to the allegation in said cross-bill concerning the
107 organization of the said St. Louis, Hannibal and Keokuk Railroad Company this defendant believes that the said company was duly organized under the general statutes of the State of Missouri for the purpose of building a railroad as stated in its charter; but as to the allegation that the said new corporation was composed almost entirely of the same stockholders and directors and had the same executive officers as said first-mentioned corporation this defendant is not informed and calls for strict proof.

This defendant denies, upon information and belief, that the stockholders in the said last-named corporation never paid anything on the stock issued therein to them.

This defendant denies, upon information and belief, that the said last-named corporation was formed for the purpose of absorbing the property of said first-named corporation without paying therefor, and without paying the debts thereof, or for the purpose of building its railroad, except in the way required by its charter, but as to the allegations concerning the collection of subscriptions by the said last-named corporation, which properly belongs to said first-named corporation, this defendant denies the same as alleged.

And this defendant, upon information and belief, denies that at the time of said transfer the property of the said first-named corporation largely exceeded in value the amount of its debts or was reasonably worth the sum of seven hundred thousand dollars ($700,000).

And this defendant, upon information and belief, denies the allegation that it was a part of the scheme of the managing and controlling officers of said corporation to place all of its property of every description out of the reach of its creditors.

109 Further answering, upon information and belief, this defendant denies that the said alleged indebtedness of the said complainant was ever assumed either by the said first-named corporation or by the said last-named corporation.

And this defendant, further answering, denies that the complainant had a valid and subsisting lien on the said property for the payment of said debt superior and paramount to the lien of this defendant as such trustee.

And this defendant, further answering, neither admits nor denies, but calls for strict proof of the same, the allegation that a deed was made of all the property of said first-named corporation to said last-named corporation for the consideration as stated in said cross-bill and under the conditions as therein stated.

This defendant, further answering, says that as to the allegations that the said last-named corporation entered into possession of the property of said first-named corporation as described in said bill this defendant neither admits nor denies the same, but calls for strict proof thereof; but this defendant denies that the said last-named corporation is identical with the said first-named corporation. This defendant denies that any assignment and transfer of property from one of said corporations to the other was ever made in fraud of the rights of the complainant; and as to the allegation that the officers and directors of said old corporation are the same as those of said new corportion this defendant is not informed, and calls for strict proof of the same; that as to the allegations that the said last-named corporation took all the said property of said first-named corporation with full knowledge and notice of said debt, which said

111 first-named corporation was owing to said complainant, or that the receiver heretofore appointed herein still holds said property subject to any lien of the complainant herein thereon for the payment of complainant's judgment and decree, this defendant denies the same.

That as to the allegation that the said assignment and transfer from the said first-named corporation to the said last-named corporation were null and void as to complainant herein and the other creditors of said old corporation, and that said last-named corporation, by taking possession of said property without paying said alleged indebtedness, made itself a trustee for the complainant herein and all the other creditors of said first-named corporation, this defendant denies the same; but as to all the allegations in the said bill concerning the institution of a suit by the complainant against both of said corporations and the rendering of judgment therein this defendant says that if any such there be they are matters of record in this court, and asks that a transcript of the record thereof be put in evidence and made a part of the record in this case; but as to the allegations that this defendant, as such trustee, took the bonds described in said bill of complaint herein with full notice of the said claim of complainant, or with notice that the said claim was unpaid, or with notice of any claim or lien upon the property assigned or transferred from said first-named corporation to the said last-named corporation, or subject to the payment of any such debt or judgment prior to the claim for the payment of the said bonds, this defendant denies the same.

This defendant, further answering, says that whether said

113 Blair and Taylor took said bonds or any part of them after a suit at law had been commenced by the complainant herein, or with notice that the debt of said complainant was unpaid, or with any notice or knowledge that the said first-named corporation had no power to assign its property to said last-named corporation, or that the said last-named corporation held said property in trust in any manner, or that the complainant herein had any lien upon the said property for the payment of his claim, this defendant, upon information and belief, denies the same.

This defendant, further answering, admits that he has allowed

the said St. Louis, Hannibal and Keokuk Railroad Company to remain in possession and operation of such property as it had up to the time of the appointment of the receiver herein, and also admits that no interest was paid by the said company upon the bonds held by the said Blair and Taylor's executors; but as to what the said company may have done with its income and earnings, if any there were, this defendant is not informed, and calls for strict proof of the same; but as to the allegations that the action commenced by this defendant in this court for the foreclosure of said mortgage was instituted for the purpose of cutting off the alleged debt of the complainant herein or for any other illegal or fraudulent purpose whatever this defendant denies the same and avers that the said suit was instituted for the purpose of foreclosing said mortgage given as security for the said bonds, upon which interest was long since in default, as stated in said bill, and for no other purpose whatsoever; and this defendant denies that the said suit is a collusive suit, or that it was instituted for the purpose of injuring said complainant or in any way preventing the collection of its indebtedness, and that
115 as to the allegation that the said Blair and Taylor have been actively participating in the management of said company or its affairs for a number of years through this defendant this defendant denies the same, and that whether said Blair and Taylor have actively participated in the management of said road through any other directors of said company this defendant, upon information and belief, denies the same.

And this defendant, further answering, avers that the claim of said complainant was not reduced to judgment until some time after the institution of this suit, and that the lien of said complainant for his said claim is long subsequent to and inferior to the lien of the mortgage upon all the property of said railroad company now being foreclosed in this suit, as hereinbefore stated; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to — hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

WALTER C. LARNED,
Solicitor for De Witt C. Blair.
THEO. G. CASE,
Sol'r for Trustee.

And on said first day of December, A. D. 1884, the following replication of De Witt C. Blair to the answer of Josiah Fogg was filed, to wit:

117 *Replication to Answer of Josiah Fogg.*

In the Circuit Court of the United States for the Eastern District of Missouri. December, 1884.

DE WITT C. BLAIR, Trustee, Complainant,
vs.
JOSIAH FOGG *et als.*, Defendants. } In Chancery.

The replication of De Witt C. Blair, complainant, to the answer of Josiah Fogg, defendant.

This repliant, saving and reserving unto himself all and all manner of exception to the manifold insufficiencies of said answer, for replication thereunto says that he will aver and prove the said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or necessary in law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

WALTER C. LARNED,
Solicitor for De Witt C. Blair.

119 And afterwards, to wit, on the fifth day of January, A. D. 1885, the following replication of Josiah Fogg to the answer of De Witt C. Blair to the cross-bill of said Fogg was filed, to wit:

Replication to Answer of Blair to Cross-Bill.

In the Circuit Court of the United States for the Eastern District of Missouri.

JOSIAH FOGG, Complainant,
vs.
DE WITT C. BLAIR, Trustee, Defendant. } In Equity. No. 2301.

The replication of Josiah Fogg, complainant in the case of his cross-bill filed in the above-entitled cause, to the answer of De Witt C. Blair, defendant to said cross-bill.

This repliant, saving and reserving unto himself all and all manner of exception to the manifold insufficiencys of said answer, for replication thereunto says—

That he will aver and prove the said cross-bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the defendant to said cross-bill is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any

other matter or thing whatsoever in the said answer contained material or necessary in law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

GEO. D. REYNOLDS,
Solicitor for Complainant in the Above X Bill.

JAMES CARR, *Of Counsel.*

121 And afterwards, to wit, on the 8th day of December, A. D. 1885, the following further proceedings were had in said cause, to wit:

Decree.

DE WITT CLINTON BLAIR, Trustee, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*, Defendants. } 2301.

In re cross-bill of Josiah Fogg.

This cause coming on to be heard, and the court having fully considered the same, it is ordered, adjudged, and decreed that said cross-bill be, and the same is hereby, dismissed.

Upon the hearing of said cause the following opinion was delivered by David J. Brewer, judge, to wit:

Opinion.

In the United States Circuit Court for the Eastern District of Missouri.

DE WITT C. BLAIR, Trustee, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK RAILROAD Co., Defendant. } In Chancery. No. 2301.

Cross-bills of Josiah Fogg and Sarah Parker.

Opinion of the court, December 8th, 1885.

BREWER, *J.* (orally):

In the case of the cross-bill of Josiah Fogg against the St. Louis, Hannibal & Keokuk Railroad Co., argued and submitted to
123 me the day before I left St. Louis a few weeks ago, I will state that I have read the evidence and am prepared to render a decision. The facts in the case are that the St. Louis & Keokuk Railroad Co. was organized under a charter of February 15, 1859. After its organization it commenced to do some work. On March 4, 1873, having done a limited amount of work, it transferred all its

assets to the St. Louis, Hannibal & Keokuk Railroad Co., a new corporation. That new corporation was composed of substantially the same persons, with substantially the same officers, and assumed the debts of the old to the amount at least of $19,000, enough to cover this claim. Prior to the transfer the St. Louis & Keokuk Railroad Co. had made a contract with the Missouri & Iowa Construction Co. for building the road. The same contract was continued by the St. Louis, Hannibal & Keokuk railroad, the date of the first being April 12, 1872, and the date of the second July 15, 1872. Under the provisions of this contract with the Missouri & Iowa Construction Company a trust deed was issued to De Witt C. Blair and Clarence G. Mitchell, as trustees, the deed being dated October 1st, 1872, and providing for bonds at the rate of $20,000 per mile. Fogg, the principal complainant, had done some work in the construction of the road prior to the transfer, prior to March 1st, 1873, for the St. Louis & Keokuk railroad. His claim was recognized on the books of that corporation, the old corporation, and substantially assumed by the new corporation and recognized on its books. There was an intermediate mortgage to the Farmers' Loan & Trust Co., but that does not cut any figure in the case. The trust deed to De Witt C. Blair and Clarence G. Mitchell was cancelled and bonds surrendered and a new trust deed issued August 1st, 1877, to De Witt C. Blair, as trustee, for $12,000
125 per mile, and that trust deed is the one which is being foreclosed in this suit.

This claim of Josiah Fogg against both companies and each company remained in parol, was not reduced to judgment, and no suit commenced thereon until the 21st of September, 1880, when he brought suit on the law side of this court against both roads, the St. Louis — Keokuk and St. Louis, Hannibal and Keokuk. That action was dismissed as to the St. Louis, Hannibal & Keokuk and passed to judgment against the St. Louis & Keokuk, the old corporation, on October 3, 1882. Thereafter he sought, by a bill in equity filed on May 3, 1883, to charge that judgment against the St. Louis & Keokuk railroad against the St. Louis, Hannibal & Keokuk. This suit passed to a decree against the St. Louis, Hannibal & Keokuk railroad May 5, 1884. The transfer from the St. Louis & Keokuk railroad to the St. Louis, Hannibal & Keokuk railroad, though reduced to writing, was never placed on record, and the question that comes up now is whether this claim put in decree on May 5, 1884, against the St. Louis, Hannibal & Keokuk railroad is a lien upon that road prior to the trust deed executed in 1877 to De Witt C. Blair, as trustee. It should be stated here that of the bonds issued under that trust deed to De Witt C. Blair a large proportion were not earned or delivered until after 1880, and then in pursuance of a contract with John I. Blair and Moses Taylor for the construction of a certain portion of the road.

Now, it is unquestioned law that a party who holds the legal title to real estate may convey a full title to one who purchases in good faith and pays value or may mortgage it to one who gives value and give a prior lien to such mortgagee as against all undis-
127 closed equities. The mortgagee or purchaser will take sub-

ordinate to such prior equities if and only if he has notice, either actual or constructive, of their existence. In this case there was no constructive notice. The contract between the old and new corporation was not placed on record. There was nothing of record to disclose that Mr. Fogg or anybody else had any claim against the St. Louis, Hannibal & Keokuk or against the St. Louis & Keokuk railroad. The only place where the information could be obtained outside the lips of witnesses was from the books of the corporation—one or the other. Now, I do not understand that a man dealing with a private corporation or even a *quasi* public corporation like a railroad is bound to take notice of what the records of that corporation show, for if it be so no man can deal with a corporation in safety without first having access to and an examination of its books, and the converse of that would be true that such a corporation is bound to show its records to whomsoever has dealings with it. In a certain sense the books of a corporation, so far as persons dealing with it are concerned, are their own private records and are not open to the inspection or knowledge of strangers, and persons are at liberty to deal with a corporation freely without danger of running against equities or claims unless they are disclosed by the public records, just the same as in dealing with an individual. You look to the record title he has, and if it is good you can deal with him on the faith of that in safety and are not chargeable with notice of any undisclosed equities. The Missouri statutes provide how a suit may become constructive notice by a filing in the register of deed's or recorder's office. There
129 was nothing of the kind done here, and therefore nothing which within the purview of those statutes would charge this mortgagee, De Witt C. Blair, or the principal bondholders, John I. Blair and Moses Taylor, with constructive notice of any claim of Josiah Fogg. There has been taken to show actual notice the depositions of John I. Blair and De Witt C. Blair. As far as Moses Taylor is concerned, who was with John I. Blair, the holder of nearly all the bonds, it appears from the testimony that the business was transacted wholly by John I. Blair.

De Witt C. Blair, the trustee, absolutely knows nothing. Counsel commented upon the remarkable ignorance which he manifests and seemed loth to believe that any man would take such a trust in such profound and dense ignorance of the facts concerning it. Well, if he had a pecuniary interest in the matter possibly that criticism might be just, but if he was, as he seems to have been, simply a nominal party in this matter, a trustee having no further duties than to deliver the bonds, and be the instrument of executing the orders of the officers of the company, it is not strange that the matter made very little impression on his mind, and that his knowledge of the condition of the road and the contracts made with reference to it was absolutely nothing. In reference to John I. Blair, his testimony was substantially that his negotiations or the negotiations of the Lackawana Iron Company, of which he is president, were originally with this Missouri & Iowa Construction Co., and that in that company were some gentlemen of railroad experience,

railroad builders of known financial ability, and that his contracts were made with that company upon the faith of these facts, and that the bonds to be received were mainly in the way of
131 a collateral security. Now, it does not seem to me strange that a man dealing with a construction company, with men with whom he had had business transactions and in whose financial ability he had confidence, that he, mainly relying on that ability and on their character, should take the securities which they tendered, relying on their statements concerning them. He had also the statements of the president of this company that the road was free from embarrassments and indebtedness, statements which, it would seem from Mr. Blair's testimony, were not only unreliable, but were coupled with many others since found to be untrue. After reading this testimony through, from its commencement to the close (subjected as both witnesses were to a searching cross-examination), it seems to me there is not one syllable to indicate that at the time the interest was acquired by John I. Blair and Moses Taylor in those bonds they had any notice or information or intimation that Josiah Fogg had any claim against the St. Louis, Hannibal & Keokuk railroad. While counsel criticise this as strange, yet I think an opposing fact is equally strange. If Josiah Fogg had a claim, which it is now proved that he did have, a claim existing prior to March 4, 1873, a claim against both the St. Louis & Keokuk railroad, and the St. Louis, Hannibal & Keokuk railroad, he permits it to rest unenforced, unreduced to judgment—a mere matter of parol—until the 21st of September, 1880, more than 7 years. It does not lie in his mouth to reflect or criticise the apparent confidence of other persons dealing with the St. Louis, Hannibal & Keokuk Railroad Co., if he was willing to trust these parties all those years and take his chances of voluntary payment. I suppose he had reason
133 to believe it would be paid, and therefore did not take any steps to enforce it. It certainly does not lie in his mouth to complain that other people were equally confiding, trusting to the representations of the same officers. It seems to me that there was neither actual nor constructive notice to either the trustee in this mortgage or to the principal bondholders of the existence of this claim at the time they became interested as trustee and as bondholders. It follows from that that this claim, as well as that of Sarah Parker, similarly situated, is not entitled to priority to the bonds, and it is so ordered.

And afterwards, to wit, on the 19th day of December, A. D. 1885, the following petition for rehearing on cross-bill of Josiah Fogg was filed in said cause, to wit:

Petition for Rehearing.

In the Circuit Court of the United States for the Eastern District of Missouri.

DE WITT C. BLAIR, Trustee, Complainant, *vs.* THE SAINT LOUIS, HANNIBAL AND KEOKUK RAILROAD COMPANY *et al.*, Defendants.	In Equity. No. 2301. Cross-Bill of Josiah Fogg.

To the honorable judges of the circuit court of the United States for the eastern district of Missouri:

The petition of Josiah Fogg, the complainant in the cross-bill filed by him in the above-entitled cause, respectfully showeth that your petitioner finds himself aggrieved by the decision and
135 order of your honorable court on the 8th day of December last in not granting the relief prayed for in said cross-bill instead of dismissing said cross-bill, and that said decision and order is erroneous for the following reasons:

1. In treating the holders of the bonds secured by the mortgage or deed of trust on the railroad in question as *bona fide* purchasers of real estate for value without notice of the equitable lien of your petitioner on the property of the St. Louis & Keokuk R. R. Company for the payment of his judgment against said company and his decree against said company and the St. Louis, Hannibal & Keokuk R. R. Company.

2. The court has applied the principles of law applicable to the sale of real estate to your petitioner's said judgment & decree, whereas it should have applied the principles of equity applicable to a trust fund for the payment of the creditors of an insolvent corporation.

3. The assignment and transfer made by the Saint Louis & Keokuk R. R. Co. of all its property to the St. Louis, Hannibal & Keokuk R. R. Co. on the 4th day of March, 1873, was beyond the powers of the former company to make, and said assignment and transfer was and is null and void as to the creditors of said St. Louis & Keokuk R. R. Company, and the St. Louis, Hannibal & Keokuk Railroad Company acquired no title, right, or interest in or to the said property thereby assigned and transferred, and the complainant, De Witt C. Blair, as trustee in said mortgage or deed of trust, acquired no lien on said property by virtue of the mortgage sued on.

4th. The court should have found and decided that the judgment and decree described in said cross-bill are a lien on the prop-
137 erty assigned and transferred by the former company to the latter company paramount and superior in equity to the mortgage sued on instead of finding and declaring said judgment & decree junior and inferior to said mortgage.

Wherefore your petitioner prays that your honorable court will

be pleased to grant a rehearing of said cross-bill, to the end that equity may be done in the premises.

JAMES CARR &
GEO. D. REYNOLDS,
Sol'rs for Josiah Fogg.

And afterwards, to wit, on the 2nd day of April, A. D. 1886, the following further proceedings were had in said cause, to wit:

Petition Overruled.

DE WITT CLINTON BLAIR, Trustee, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*, Defendants. } 2301.

The petition of Josiah Fogg for a rehearing on cross-bill having heretofore been submitted, and the court being fully advise thereof, it is ordered that said petition be, and the same is hereby, overruled.

Upon the hearing of said petition of Josiah Fogg for a rehearing on cross-bill the following opinion was delivered by David J. Brewer, judge, to wit:

139 *Opinion.*

DE WITT C. BLAIR, Trustee,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.* } No. 2301.

In re JOSIAH FOGG.

BREWER, *J.* (orally):

In the case of De Witt C. Blair *vs.* Josiah Fogg a petition for rehearing was argued the other day, counsel claiming that there were two or three matters which the court did not consider, which indeed were not suggested to the court, and which justified a different conclusion. Mr. Fogg had away back in 1870 a good claim against the St. Louis & Keokuk railroad. That company organized under a special charter, and having done some work transferred all its property to the St. Louis, Hannibal & Keokuk railroad, a company organized under the general statutes. In the instrument making the transfer there was a stipulation that the new company should assume and pay debts to the amount of $19,000, which it is conceded covered the claim of Mr. Fogg. That instrument of transfer was never recorded. The new company finished the road, placed its mortgage upon the property, which mortgage was foreclosed in this suit. After years had passed Mr. Fogg commenced an action at law against the St. Louis & Keokuk Railroad Company and obtained judgment.

He followed that by a proceeding in equity against the St. Louis, Hannibal & Keokuk company and obtained a decree, charging this judgment against the new company. He now claims that this judgment is a lien prior to the mortgage, and counsel in the argument before me on the petition for rehearing contended
141 that the old company under its charter had no power to transfer; that the new company took the property subject to the debts of the old, and that the creditors of the old company can follow that property wherever they find it. All that, or at least the substance of it, was adjudicated when the decreee passed against the St. Louis, Hannibal & Keokuk railroad. Then he contends that the conditions of the transfer, which were shown in the conveyance, although not of record, were conditions which every purchaser from the St. Louis, Hannibal & Keokuk Railroad Company was bound to take notice of. There is not a syllable of testimony showing that there was ever of record anything indicating that the St. Louis & Keokuk Company ever did a particle of work, ever obtained title to a foot of ground for right of way or other purposes, or ever had anything to do with the building of the road. All that the record shows is that the St. Louis, Hannibal & Keokuk Company, a corporation organized under the general law of the State, was at the time of the mortgage in possession of a road partially completed. Now, I do not understand that a party is bound to take notice of matters which are simply floating—resting in parol. It is a common thing for more than one corporation to be organized for the construction of road between the same termini. There are to-day two roads running between here and Kansas City, and I believe it is true there are two or three more corporations organized with a view to the construction of other roads between the same termini. If a party finds a corporation, organized under the law of the State, in the possession of a railroad partially or fully completed he is not bound to assume that there may be some other corporation
143 having like powers which prior thereto was in possession or had rights therein. Unless the record in some way notifies him of the title of that other corporation he is justified in assuming that the company in possession is the only company that ever was in possession or that ever had done any work thereon or had any rights thereto; and that is the record in this case.

The other proposition of counsel is that by the equity rules of pleading Mr. Fogg was entitled to a decree. He claims that Mr. Blair in his answer only denied notice, and that that was not sufficient. When he claimed to be an innocent purchaser for value without notice he should have stated in his answer the mortgage, its date, the purpose, the contents, and the consideration paid; that the consideration was paid in good faith, and when it was paid. As he was specially charged with notice he should deny the circumstances from which notice could be inferred. I do not so understand the rules of equity pleading. Prior record title was in the mortgagee. Mr. Fogg comes in by his cross-bill and insists that though he has a junior title of record he has a prior equity. Now, under those circumstances, it seems to me that it is for him to allege all the facts

tending to show that a person having the prior legal title had notice, etc., and when he alleged that it is sufficient in the answer to deny it and not necessary to go further and specifically allege all the matters above stated, these being the only grounds I am compelled to overrule the petition for rehearing.

145 And afterwards, to wit, on the 13th day of April, A. D. 1886, the following further proceedings were had in said cause, to wit:

Appeal Allowed.

DE WITT C. BLAIR, Trustee, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*, Defendants. } 2301.

Now comes Josiah Fogg, by his solicitors, and prays an appeal to the Supreme Court of the United States from the decree of this court on his answer and cross-bill; and thereupon it is ordered that an appeal be allowed on said Fogg giving bond in the sum of $500.00, to be approved by the court.

And afterwards, to wit, on the 21st day of June, A. D. 1886, the following further proceedings were had in said cause, to wit:

DE WITT CLINTON BLAIR, Trustee, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*, Defendants. } 2301.

In re JOSIAH FOGG, Cross-complainant.

Now comes Josiah Fogg, cross-complainant herein, by his solicitors, and presents his appeal bond in the sum of five hundred dollars, which is approved and ordered to be filed as part of the record in this cause.

And thereupon it is ordered that the clerk of this court make out and certify to the Supreme Court of the United States a transcript of the record and proceedings in this cause.

147 Know all men by these presents that we, Alexander J. P. Garesche, as principal, and Marcus A. Wolf, as surety, are held and firmly bound unto De Witt C. Blair, trustee, in the full and just sum of five hundred dollars, to be paid to the said De Witt C. Blair, trustee, his heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifteenth day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at the March term, 1886, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Josiah Fogg, cross-complainant, and

De Witt C. Blair, trustee, &c., respondent, a decree was rendered against the said Josiah Fogg; and the said Josiah Fogg having obtained an appeal of the said court to reverse the decree in the aforesaid suit:

Now, the condition of the above obligation is such that if the said Josiah Fogg shall prosecute said appeal to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

ALEX. J. P. GARESCHE. [SEAL.]
MARCUS A. WOLFF. [SEAL.]

Approved by—

SAMUEL TREAT, *Judge.*

148 [Endorsed:] No. 2301. United States circuit court, eastern district of Missouri. Blair, trustee, respondent, *vs.* Josiah Fogg, X comp't. Bond. $500.00. Alex. J. P. Garesche, principal, and Marcus A. Wolf, surety. Filed 21st day of June, 1886. A. P. Selby, clerk.

149 EXHIBIT "A."

No. 66. UNITED STATES OF AMERICA. $500.

The county of Lincoln, in the State of Missouri, hereby agrees to pay to the St. Louis and Keokuk Railroad Company or bearer the sum of five hundred dollars in ten years from the first day of July, 1870, with interest at the rate of ten per cent. per annum, payable semi-annually on the first days of January and July in each year at the National Bank of the State of Missouri, in St. Louis, Mo., on the presentation and surrender of the proper annexed coupon.

This bond is issued under the authority of an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the St. Louis and Keokuk Railroad Company," approved Feb. 16th, 1857, and in pursuance of an order of the county court of said county, dated August 13th, 1868, to subscribe three hundred thousand dollars to aid in the construction of the St. Louis and Keokuk railroad, and in further accordance with an amendment to said order dated June 21st, 1870. This bond shall be countersigned by the agent of said county before the delivery thereof. For the payment of this bond the faith and credit of Lincoln county is irrevocably pledged.

In testimony whereof the president of said county court has hereto subscribed his name, and the same is attested by the clerk of said court, and the seal of said court affixed hereto this twenty-first day of June, 1870.

LEVI BICKEL,
Presiding Judge of Lincoln County Court, Mo.

Attest: F. C. CAKE, *Clerk.*

Countersigned by—

D. T. WADDY,
Agent of Lincoln Co.

[Seal of Lincoln County Court.]

151-153 EXHIBIT "B."

UNITED STATES OF AMERICA.

No. 15. $500.

State of Missouri, County of Ralls.

The county of Ralls, in the State of Missouri, hereby agrees to pay the St. Louis and Keokuk Railroad Company or bearer the sum of five hundred dollars in ten years from the tenth day of February, A. D. 1870, with interest at the rate of ten per centum per annum, payable annually on the tenth day of February in each year at the National Bank of the State of Missouri, in St. Louis, Mo., on presentation and surrender of the proper annexed coupon. This bond is issued under the authority of an act of the General Assembly of the State of Missouri entitled "An act to incorporate the St. Louis and Keokuk Railroad Company," approved February 16, 1857, and in pursuance of an order of the county court of said Ralls county, dated February 8th, 1870, to subscribe two hundred thousand dollars to aid in the construction of the St. Louis and Keokuk railroad, and this bond shall be countersigned by the agent of said county before the delivery thereof. For the payment of this bond the faith and credit of said Ralls county is irrevocably pledged.

In testimony whereof the president of said county court has hereto subscribed his name, and the same is attested by the clerk of said court, and the seal of said court affixed hereto this tenth day of February, A. D. 1870.

[Seal of Ralls County Court.]

N. S. DIMMITT,
Presiding Judge of Ralls County Court, Mo.

Attest: GEO. E. MAYHALL, *Clerk.*

155 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

Be it remembered that on the 17th day of March, A. D. 1884, the following, among other, proceedings were had in said court, to wit:

JOSIAH FOGG, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*, Respondents. } 2191.

On motion of defendants leave is granted E. C. Case, receiver, to appear and defend this suit.

157 United States Circuit Court, Eastern District of Missouri, *ss:*

DE WITT C. BLAIR, Complainant,
vs.
ST. LOUIS, HANNIBAL AND KEOKUK RAILROAD COMPANY, Defendants. } Equity, No. 2301.

Cross-Bill of Josiah Fogg.

Answer of De Witt C. Blair, trustee, to cross-bill. Master's No.

To the honorable judges of the United States circuit court for the eastern district of Missouri:

The undersigned special master, to whom it was referred under an order of this court of June 1st, 1885, to take the proofs as to the answer and cross-bill of Josiah Fogg, begs leave to report that after due notice to all parties he proceeded to the hearing of the same, at his office, No. 1 Broadway, in the city of St. Louis, State of Missouri, on June 10th, 1885, at 2 p. m., and adjourned said hearing from time to time, by and with the consent of counsel, until all of said proofs were taken, as set forth in the record of proceed-
158 ings and testimony attached hereto, which is made a part of this report, as follows, to wit:

DE WITT C. BLAIR, Trustee,
vs.
ST. LOUIS, HANNIBAL AND KEOKUK R. R. Co. *et al.* } 2301.

Cross-Bill of Josiah Fogg.

Appearances: Theodore G. Case, for trustee; James Carr and Geo. D. Reynolds, for Josiah Fogg.
Hearing June 10th, 1885, before B. Gratz Brown, special master.

Josiah Fogg, in support of his cross-bill, introduced evidence as follows:

Act to Incorporate the St. Louis & Keokuk R. R. Campany.

I. An act of the General Assembly of the State of Missouri, entitled An act to incorporate the St. Louis and Keokuk R. R. Co., approved Feb. 16th, 1857, Session Acts 1856–'7, page 125.

Be it enacted by the General Assembly of the State of Missouri as follows:

§ 1st. A company is hereby incorporated called "The St. Louis and Keokuk Railroad Company," the capital stock of which
159 shall be six millions of dollars to be divided into shares of one hundred dollars each, the holders of which, their successors and assigns, shall constitute a body corporate and politic, and

by the name aforesaid shall have continued succession; may sue and be sued, plead and be impleaded, defend and be defended against, and may make and use a common seal and change or alter the same, and shall be able in law and equity to make contracts, may take, hold, and possess, and enjoy the fee simple or other title in and and to any real estate, and may sell, convey, or mortgage the same, and may make by-laws and regulations proper and necessary to carry into effect the provisions of this act not repugnant to the laws or Constitution of the Unitted States or of this State, and shall have the usual and necessary powers for such purpose.

§ 2d. J. R. Barrett, Wm. M. Cook, Charles Hunt, D. Frost, Jas. H. Lucas, Rob't A. Barnes, Theo. Betts, Edward Walsh, and John D. Coalter, of St. Louis county; Ludwell E. Powell, Wm. C.
160 Lindsay, John W. Pulliam, and E. D. Bevitt, of St. Charles county; Jas. H. Britton, Francis Parker, Joseph M. Heady, David Bailey, and Tully R. Cormick, of the county of Lincoln; Edwin Draper, Jas. O. Broadhead, Henry J. Findley, Jas. M. Templeton, and John W. Davis, of Pike county; James F. Matson, Wm. Newland, Neil Cameron, Thos. Cleaver, and Harvey Wellman, of Ralls county; John B. Helm, T. R. Selmes, Jamison Hawkins, Wm. Carson, and James Shannon, of Marion county; H. M. Woodyard, Thos. O. Reese, Wm. Hagood, Thos. Richardson, and Daniel Ligon, of Lewis county, and George K. Biggs, Peter A. Hitt, Isaac H. Calvert, James Cowhill, and DeKalb Musgrove, of Clark county, or any nine of them shall constitute the first board of directors under this act, and shall hold their officers until their successors be qualified. They shall, within ten years after the passage of this act, meet at such time and place as shall be designated by any three of them, and organize as a board of directors, and when organized they shall cause books to be opened for the subscription of the capital
161 stock of said company at such time and place as they shall designate, under the supervision of such persons as they shall appoint, and may continue them open as they may deem proper, and may reopen said books, when necessary, until the whole stock shall be subscribed.

§ 3d. So soon as fifteen hundred shares shall be subscribed the directors shall cause an election to be held for nine directors, at such time and place as they may appoint, and give notice of the same in two or more public newspapers.

4th. The stockholders of said company shall meet on the first Monday in May, in each year, at such place as may be designated by the by-laws of said company, of which at least twenty days' previous notice shall be given in two or more newspapers published in the State, and choose by ballot, by a majority of the votes present, to be given in person or by proxy, thirteen directors, owners
162 of stock in the company, the said directors and those thereafter to be chosen, in pursuance of the provisions of this act, at their first meeting shall choose by ballot one from their number as president of said company, and said president and directors shall direct the affairs of said company, and hold their offices for one year, and until others are elected and qualified.

5th. At every annual meeting the said stockholders shall have power, by a majority of the votes given, to alter or repeal their by-laws and regulations, and may meet at such other times and places as may be appointed by the president and directors upon such notice as may be prescribed by the by-laws of the company, and the president at the request, in writing, of any number of the stockholders representing not less than one-seventh, in number and interest, shall cause a special meeting upon giving the like notice of the time, place, and objects of such meeting, and such objects and none other shall be acted upon at such meeting, nor shall
163 any business be transacted at such meeting unless a majority of the stockholders be there represented, but the meeting may adjourn from day to day until such majority shall be present.

6th. The election for directors shall be conducted in the following manner: The directors for the time being shall appoint three stockholders, being neither directors nor candidates, who shall take and subscribe an oath or affirmation before a justice of the peace, well and truly according to law, to conduct said election to the best of their knowledge and ability. The judges shall decide upon the qualifications of voters, and when the election is closed count the votes and declare who has been elected.

In case no election shall be had at the time specified the corporation shall not by that reason be dissolved, but it shall be lawful to hold an election for directors any day thereafter by giving at least ten days' previous notice of the time and place of holding said
164 election in the newspapers aforesaid. In case of the death, resignation, or removal from this State of a director, or of a failure to elect in case of a tie-vote, the vacancy may be filled by the board of directors. At all general meetings or elections by the stockholders each share of the stock under the number of twenty shall entitle the holder to one vote, and each stockholder holding over the number of twenty shares shall have one vote for every two shares exceeding twenty and not exceeding two hundred, and one vote for every five shares exceeding two hundred and not exceeding five hundred, and one vote for every ten (10) shares exceeding five hundred, and each ballot shall have endorsed thereon the number of shares thereby represented, but no person or party (females, sick persons, and absentees excepted) residing within ten miles of the place appointed for every such election or general meeting shall be entitled to vote by proxy, nor shall any proxy be received nor entitle the holders thereof to vote unless the same
165 be duly dated and executed within twelve months next preceding such election or general meeting, and every such proxy received and voted upon as aforesaid shall be retained and filed amongst the papers of the company until after the next annual meeting or election, subject to the inspection or examination of any stockholder who may desire it.

7th. The company shall have power by themselves or agents to enter upon and take from any land in the neighborhood of the line of their railroad earth, gravel, stone, wood, water, or other materials necessary for the construction or operation of said road, and for the

purpose of procuring water for their uses may lay pipes, erect pumps, dams, and reservoirs if the owner of said lands and the said company can agree upon the damages they may do to said lands and its appurtenances, or if they cannot agree the damages shall be ascertained by three disinterested householders, who, being appointed for that purpose by any justice of the peace thereto required by either of the parties, shall be sworn by him, and shall then ascertain the compensation upon their own view of the ground, and of the road, earth, stone, or gravel which may have been taken therefrom and the injury done in taking them: Provided, however, that it shall be the duty of the party making the application to show to the justice of the peace that ten days' previous notice of the time of making the same has been given to the other party or to some one of them, and no award which may be given under any appointment without such notice shall be obligatory or binding upon either party, and either party not satisfied with the award may appeal to the circuit court of the county in which said lands may lie, which may at its discretion confirm the said award and enter it of record, or as often as they may deem it necessary may supercede the said viewers or any of them, appoint others in their stead, and direct another view and award to be made in the manner aforesaid.

If any justice or freeholder shall refuse or neglect to perform the duties assigned them, respectively, as prescribed in this section, upon being thereto required by either party as aforesaid, such justice or freeholder shall forfeit or pay to such person making the application a sum not exceeding twenty-five dollars, to be recovered before any justice of the peace of the county of which he is an inhabitant, and shall be, moreover, liable to the action of the party aggrieved.

8th. The capital stock, together with all machines, wagons, cars, engines, or carriages belonging to the company, together with all their works and other property and all profits which shall arise from the same, shall be vested in the respective shareholders of the company forever in proportion to their respective shares, and the same shall be deemed personal estate and shall be exempt from any public charge or tax whatever for the period of five years from and after the passage of this act. The said company shall have power from time to time to borrow such sums of money as may be necessary, subject to the prior lien of the State, for completing and finishing or operating their railroad, and to issue and dispose of their bonds for any amount so borrowed, not exceeding their unsubscribed capital, and to mortgage, if necessary, their corporate property and franchises or any part thereof to secure the payment of any debts contracted by the company as aforesaid, and the directors of the company may confer on any holder of any bonds issued, for money borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of said company at any time not exceeding ten years from the date of the bond, under such regulations as the directors may see fit to adopt.

9. When payment for the stock of any subscriber or stockholder

shall be fully made the president and directors shall de-
169 liver one or more certificates of such stock, signed by the president and countersigned by the treasurer under the seal of the company, to such subscriber or stockholder for the number of shares belonging to him or her, which certificates shall be transferable in a book to be kept for that purpose by the company, and when transferred shall be delivered up to the president and cancelled and new certificates be issued to the assignees. All assignment of shares partially paid in shall be entered upon the books of the company, but such assignments shall in nowise exempt the assignor or his representatives from liability for the payment of all sums due upon the stock assigned by him if the assignee or his representatives shall fail to pay the same.

§ 10. Dividends of so much of the profits of said company as shall appear advisable to the directors shall be declared semi-annually and be paid to the stockholders or their legal representatives on application at the office of said company at any time after
170 the expiration of ten days from the time of declaring the same, but the dividends shall in no case exceed the actual amount of net profits of said company, so that the capital stock shall never be impaired thereby, and if the said directors shall make any dividends which shall impair the capital stock of said company the directors consenting thereto shall be liable in their individual capacities to the company for the amount of capital stock so divided, and each director present, when such dividend shall be declared, shall be considered as consenting thereto unless he immediately enter his protest on the minutes of the board and give public notice to the stockholders of the declaring of such dividends.

§ 11. The said corporation shall make an annual report to the secretary of state of the operations of the year ending on the first day of December, which shall be verified by the oath of the treasurer and acting superintendent of operations, and filed in the
171 office of the secretary of state by the third Monday in December in each year, and shall state—

First. The capital stock and the amount actually paid in.

Second. The amount expended for the purchase of land, for the construction of the road, for buildings, and for engines, and for cars, respectively.

Third. The amount and nature of its indebtedness and the amount due the corporation.

Fourth. The amount received for the transportation of passengers, of mail, of property, and from all other sources.

Fifth. The amount of freights, specifying the quantity in tons, of the products of the forests, of animals, of vegetable food, other agricultural products, manufactures, merchandise, and other articles.

Sixth. The amount paid out for repairs.

172 Seventh. The number and amount of dividends and when made.

Eighth. The number of engine-houses and shops, of engines and cars, and their character.

Ninth. The number of miles run by passenger, freight, and other trains, respectively.

Tenth. The number of men employed and their occupation.

Eleventh. The number of persons injured in life or limb and the cause of such injuries.

Twelfth. Whether any accidents have arisen from carelessness or negligence of any person in the employment of the corporation, and whether such person is retained in the service of the corporation.

§ 12. If any passenger shall refuse to pay his fare or toll it shall be lawful for the conductor of the train and the other servants of the corporation to put him out of the cars at any usual stopping place the conductor shall select.

173 § 13. In forming a passenger train, baggage, freight, merchandise, or lumber cars shall not be placed in the rear of passenger cars, and if they or any of them shall be so placed and any accident shall happen to life or limb the officer or agent who so directed or knowingly suffered such arrangement, and the conductor and engineer of the train shall each and all be held guilty of intentionally causing the injury, and shall be punished accordingly.

§ 14. A steam-whistle shall be placed on each locomotive engine and be sounded at the distance of at least forty rods from the places where the railroad shall cross any road or street, and be kept sounding until it shall have been crossed; and the said company shall be liable for all damages which shall be sustained by any person by reason of neglect thereof.

§ 15. If any person, while in charge of a locomotive engine running upon the railroad of said company or while acting as a
174 conductor of a car train on said railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

§ 16. If any person shall wilfully do, or cause to be done, any act or acts whatsoever whereby any building, construction, or work of said company, or any engine, machine, or structure, or anything appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured, or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor and shall forfeit and pay to the said company treble the amount of damages sustained by means of such offense.

§ 17. If any person shall wilfully or maliciously place any obstruction upon the line of said railroad, whereby the lives of passengers thereon shall be endangered, such person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than three months,
175 or in the penitentiary for a term not more than five years: Provided, That nothing herein contained shall prevent the company from pursuing any other proper civil remedy at law in such cases.

§ 18. The power of condemning land for the right of way granted by the law regulating corporations shall be construed to include necessary lands required for depots, engines, and warehouses, machine shops, water-stations, stopping stages, and turnouts.

§ 19. The said company shall commence the construction of said — within ten years after the passage of this act, and may from time to time construct so much thereof as may be in the ability of said company.

§ 20. The directors shall appoint agents, clerks, engineers, superintendents, and other officers and servants for said company; shall keep a journal of their proceedings; shall cause correct books
176 and accounts to be kept; they may determine by law what number of directors shall constitute a quorum, and may appoint committees, fill all vacancies in any office under said company; they shall fix the salaries of the officers and agents of said company; they may take security from their officers and agents; may adopt such measures and acts as will be best calculated to promote the prosperity and interest of said company.

§ 21. The directors shall make and advertise calls for the payment of capital stock at such times and in such manner as they may deem proper, and if any stockholder shall fail to pay such requisition within ten days after the time appointed said company may recover the same with interest, and if not collected may declare the stock forfeited and sell the same, and no delinquent stockholder shall vote in said company.

§ 22. Said company may take voluntary relinquishments
177 of the right of way for said road and the necessary depots and water stations, and if the land through which said road shall pass shall belong to minors, in whole or in part, the guardian or curator shall have power to convey to said company so much of said land as may be necessary for the purposes aforesaid on fair and equitable terms, but every such conveyance by a guardian shall be subject to the approval or rejection of the probate or county courts in which such guardianship is pending.

§ 23. If any owner of any tract of land through which said road shall pass shall refuse to relinquish the right of way for said road to said company, or if the owners be infants or persons of unsound mind or non-residents of the State, the facts of the case shall be specifically stated to the judge of the circuit court of the county in which such lands are situated, and said judge shall appoint three disinterested citizens of the county to view said lands, who shall take into consideration the value of the lands and the advantages
178 and disadvantages of the road to the same, and shall report, under oath, what damages are done to the same or any improvements thereon, stating the amount of damages assessed, and shall return a plat of the land thus condemned. Notice of such application to such judge shall be given to the owner of such land five days before the making of the application if such owner reside in this State or to his guardian; and if such owner be a non-resident of this State he may be served with actual notice or by an advertisement for four weeks in some public newspaper.

§ 24. The persons appointed to view and value such land shall file their report and plat in the office of the clerk of the circuit court of the county in which the land or any part thereof is situated, and if no valid objections be made to said report the court shall enter

judgment in favor of such owner against such company for the amount of damages assessed, and he shall make an order
179 vesting in said company the fee simple title of the land in such plat and report described. Objections to such report must be filed within ten days after the same shall be filed, which objections shall be examined by said judge, in term time or in vacation, and he may hear testimony and by judgment confirm said report, or may set the same aside and appoint three other viewers, who shall proceed in the same manner and make their report until a report is confirmed: Provided, That, in order that the work of construction of said road may not be impeded, that after said viewers have made and filed their reports and plat in the office as aforesaid the company, after having made a tender of the amount of damages to the person or persons or made a deposit of the same with the clerk of the county court in which the case may be pending, shall be authorized to proceed in the construction of the work as fully as though no disagreement had arisen. In all such cases the court shall adjudge the cost of such proceedings according to equity,
180 and the court shall have power to make such order and take such other steps as will promote the ends of justice between the owners of such lands and the company.

§ 25. Said company may build said road along or across any State or country road, street or wharves of any city or town, and over any stream or highway; but whenever said road shall cross any State or county road said company shall keep good and sufficient causeways or adequate facilities for crossing the same, and said railroad shall not be so constructed as to prevent the public from using any road, street, or highway along or across which it may pass; and when said railroad shall be built across any navigable stream, said company shall erect a bridge sufficiently high on which to cross, or shall construct a drawbridge, so that in no case shall the free navigation of said river be obstructed. When any person shall own lands on both sides of said road said company, when required so to do, may
181 make and keep in good repair one causeway or other adequate means of crossing the same.

§ 26. Said company shall commence the construction of said road within ten years from the passage of this act, and shall complete the same within twenty years thereafter, and said company shall have power to use, manage, control, and enjoy said road; shall determine what kind of carriages shall be used thereon, and by whom and in what manner, and shall determine the terms, conditions, and manner in which merchandise, passengers, and property shall be transported, and shall have power to construct and keep such turnouts, gates, bridges, culverts, toll-houses, depots, warehouses, causeways, and other buildings, machineries, and fixtures as may be necessary; said company may receive such tolls and freights as may be determined upon by the directors, and shall keep posted up rates of toll and freight to be charged.

§ 27. Dividends of the profits of the company shall be
182 made annually, and oftener if necessary, but the directors

may reserve or set apart a portion of the profits as a contingent fund to meet expenses and losses.

§ 28. On every annual meeting of said company the directors shall make to the stockholders an exhibit of the affairs and condition of the company.

§ 29. It shall be lawful for the county court of any county in which any part of the route of said railroad may be to subscribe to the stock of said company, and it may invest its funds in the stock of said company, and issue the bonds of such county to raise funds to pay the stock thus subscribed, and to take proper steps to protect the interest and credit of the county. Such county court may appoint an agent to represent the county, vote for it, and receive its dividends, and any city, town, or incorporated company may subscribe to the stock of said railroad company, and appoint an agent to represent its interest, give its vote, and receive its divi-
183 dends, and may take proper steps to guard and protect the interest of said city, town, or incorporation.

§ 30. When said road shall be completed the company shall file a plat thereof in the office of the secretary of state; and the Legislature may, at any time, require a statement from the company as to the progress of the work, the amount of business, and the receipts of the company, and the books and accounts of said company may at any time be investigated by a committee appointed by the General Assemby.

§ 31. Said company shall keep a fair record of the whole expense of constructing said road, and at the end of fifty years the State shall be at liberty to purchase said road, by paying to said company the amount which it shall be valued at by persons to be mutually chosen by the State and by said company; but two years' notice shall be given to said company of the intention of the State to purchase said railroad.

184 § 32. When any person shall cease to be a stockholder he shall cease to be a member of this company.

§ 33. The operations of said company shall be confined to the general business of locating, constructing, making, and using said railroad, and the acts necessary to carry the same into complete and successful operation.

§ 34. Said company shall have power to receive and hold loans, gifts, grants, and donations of lands, money, or bonds, in any quantity, from this State or the United States, and may sell, convey, pledge, or otherwise dispose of said land, money, or bonds, or any part thereof, and apply the proceeds of the same to the construction of said railroad.

§ 35. Said company shall have power to mark out, locate, and construct a railroad from some suitable point on the North Missouri railroad, not exceeding thirty miles west of St. Charles in St. Charles county, by the way of Louisiana in Pike county, Hannibal in Marion county, and Canton and La Grange in Lewis county, to some
185 point near the mouth of the Des Moines river, on the northern boundary of the State, on a line, the most suitable and advantageous as regards distance, grade, cost of road, and per-

manent value of same, when completed between the town of St. Charles and the city of Keokuk in Iowa.

§ 36. This act and the company hereby incorporated are exempted from the seventh, thirteenth, fourteenth, sixteenth, seventeenth, eighteenth, and nineteenth sections of the first article of the act concerning corporations, approved November 23, 1855.

This act to be in force from and after its passage.

Approved February 16, 1857.

Objected to by solicitor for De Witt C. Blair, trustee, as immaterial and irrelevant.

II. Record book of the minutes and proceedings of the incorporators, directors, and stockholders of the St. Louis and Keokuk R. R. Co.

Stipulation in Regard to Copying from the Minute Book of the St. L. & K. R. R. Co.

It is agreed and stipulated by counsel herein that either party may have such portions of said record book copied into the record
186 in this case as they deem material, subject to exception by the opposite party on the ground of immateriality and irrelevancy.

Introduction of Certain Parts of the Minute Book of the St. L. & K. R. R. Co. in Evidence.

Counsel for Josiah Fogg cites pages 18, 19, 20 of said Record; also pages 91 to 106, inclusive; also pages 140, 141, and part of 142; also pages 148, 149, and part of 150; also pages 199, 202, 203, 204; also pages 221, 222, 223, 224; also pages 230, 231, 232 of the same, and offers them in evidence.

Objection to the Introduction of the Minute Book in Evidence.

Counsel for trustee objects to the introduction in evidence of each and every of the said passages of the said record book, because each and every of said pages are incompetent and immaterial testimony, not germain to the issues raised by the cross-bill of Josiah Fogg and answer in this case.

Organization of St. L. & Keokuk R. R. Co. under the Charter.

Saint Louis and Keokuk Railroad Co.

In pursuance of an act of the General Assembly of Missouri, approved February 16th, 1857, public notice is hereby given
187 that a meeting of the corporators named in said act will be held at the Planter's House, in the city of St. Louis, on Tues-

day, the 8th day of May next, at 12 o'clock m., for the purpose of organizing said company.

J. H. BRITTON.
JAS. O. BROADHEAD.
JAS. H. LUCAS.
H. J. FINDLEY.
EDWIN DRAPER.
JAS. M. TEMPLETON.
ROB'T A. BARNES.
THEO. BETTS.

ST. LOUIS, *April 24th*, 1866.

The above notice in printed form was mailed and sent to each of the incorporators mentioned in the act.

In response to the above call the following-named corporators mentioned in the act "to incorporate the St. Louis and Keokuk Railroad Company," met at the Planters' House, in Saint Louis, Tuesday, May (8th) eighth, eighteen hundred and sixty-six (1866):

Edwin Draper.
Jas. H. Britton.
Jas. H. Lucas.
Jas. O. Broadhead.
Joseph M. Heady.
Henry J. Findley.
188 Jas. M. Templeton.
Jas. T. Matson.
Neil Cameron.
Theo. Betts.

On motion of Jas. Britton, Edwin Draper was elected chairman and Josiah Fogg secretary.

On motion of Joseph M. Heady, James H. Britton, James O. Broadhead, and Edwin Draper were chosen an "executive committee," who were authorized to attend to the general business of the corporation until it should pass into the hands of the stockholders.

On motion, James H. Britton was chosen treasurer.

On motion of Jas. T. Matson—

Resolved, That "books of subscription" be opened on Monday, the fourth (4th) day of June next, under the supervision of—

Jas. H. Britton, of St. Louis, St. Louis county, Mo.
Joseph M. Heady, of Troy, Lincoln " "
W. S. Cochrane, of Auburn, " " "
Dr. Jas. Welsh, of New Hope, " " "
Edw'd B. Carroll, of Clarksville, Pike " "
J. E. Carstarphen, of Louisiana, " " "
W. W. Freeman, of Saverton, Ralls " "
Jamison Hawkins, of Hannibal, Marion county, Mo.
189 Thomas Richardson, of La Grange, Lewis Co., "
Thos. O. Reese, of Canton, " " "
and George K. Biggs, of Alexandria, Clark " "

On motion, adjourned.

JOSIAH FOGG, *Secretary.*

MAY 29TH, 1866.

Eleven (11) books for subscription of stock in "the Saint Louis and Keokuk Railroad Company," properly headed and prepared, were delivered as follows:

One to Jas. H. Britton, of St. Louis, and ten (10) sent through the post office (postage prepaid) directed as follows:

One (1) to Jos. M. Heady, Troy, Lincoln Co., Mo.
" " " Wm. S. Stockton, Auburn, Lincoln Co., Mo.
" " " Dr. Jas. Welsh, New Hope, Lincoln Co., Mo.
" " " Edw'd R. Carroll, Clarksville, Pike Co., Mo.
" " " J. E. Carstarphen, Louisiana, Pike Co., Mo.
" " " W. W. Freeman, Saverton, Ralls Co., Mo.
" " " Jamison Hawkins, Hannibal, Marion Co., Mo.
" " " Thos. Richardson, La Grange, Lewis Co., Mo.
" " " Thos. O. Reese, Canton, Lewis Co., Mo.
" " " Geo. K. Biggs, Alexandria, Clark Co., Mo.

JOSIAH FOGG, *Secretary.*

190 ST. LOUIS, *Sept.* 22, 1870.

Board of directors met at Planter's House. Present: Josiah Fogg, president; N. S. Dimmitt, Walton Perkins, James McKenzie, P. P. Parker, S. F. Murray, and S. R. Woolfolk.

The minutes of the previous meeting were read.

A communication was received from E. Hayden tendering his resignation as a director. Accepted.

On motion of P. P. Parker, Mr. David T. Waddy, of Lincoln county, was nominated, and, upon ballot, was duly elected a director instead of E. Hayden, resigned.

A communication was received from I. L. Garrison tendering his resignation as a director. Accepted.

On motion of Mr. Woolfolk, Wilson B. Elliott, of Ralls county, was nominated, and, upon being balloted for, was duly elected a director instead of I. L. Garrison, resigned.

N. S. Dimmitt offered the following, which, after being read and considered, was unanimously adopted:

Resolution Ratifying Subscription of $75,000 *to Ralls County Branch R. R.*

Whereas at a meeting of a part of the directory of the company, held on the 8th day of September, 1870, a resolution was
191 adopted by the directors present authorizing a subscription of $75,000 stock of this company to be taken in a branch of this road in said order named, said stock to be paid for only in the bonds of Ralls county when paid to the company, and Nathan S. Dimmitt was appointed agent of this company to subscribe stock to said branch railroad company, and Nathan S. Dimmitt, Abraham McPike, and James McKenzie were appointed a committee to contract with said Ralls County Branch Railroad Company, by lease, purchase, or otherwise, for the construction of and operating of said

branch railroad; and whereas it appears from the record aforesaid made of that day that there was not a quorum of the directors present:

Now, therefore, the directors present at this meeting adopt and approve the resolution aforesaid, with, however, the understanding that the committee aforesaid be, and they are hereby, required to submit any contract which they may make under said order to this board for its approval and ratification or rejection as in the good judgment of the board shall seem best.

192 On motion of P. P. Parker the resolution passed at the previous meeting respecting the endorsement of the bonds of Ralls county as adopted on the 8th Sept. be ratified and approved. Passed unanimously.

Mr. Murray read the following, which was adopted and ordered to be recorded:

Report of Committee Auditing Claim of Josiah Fogg et al.

"On an examination of the accounts of the company made by the board of directors this day up to the 4th day of May, 1870, it is found that the amount of charges against said company up to said 4th day of May, 1870, in the sum of nineteen thousand six hundred and sixty-two $\frac{75}{100}$ dollars due to the following-named parties as follows:

To—

Abraham McPike, for services rendered	$500 00
Nathan S. Dimmitt, for services & expenses	3,115 00
Josiah Fogg, for services, expenses, and outlay	8,607 75
Nathan H. Parker, services as sec'y	200 00
S. Dwight Eaton	750 00
L. J. Dryden	200 00
P. Draper	100 00
Wm. S. Bullitt, for survey	500 00
John F. Cook and others, for survey	1,150 00
Josiah Fogg, items	940 00
Walter Perkins, travelling ex. & services	300 00
S. F. Murray	500 00
James McKenzie	2,500 00
J. D. S. Dryden, att'y, for salary	300 00
	19,662 75

193 And for that amount only the company hold John S. Wolf, the contractor, liable for services and liabilities of the company up to that day, he being subject to the other items of charge mentioned in his contract of said 4th of May, 1870, which may have been or may be made against him in accordance with said contract after the 4th of May, 1870, the date of the contract aforesaid; and it is ordered that the accounts therefor this day filed be, and the same are hereby, audited and allowed.

On motion of Judge Dimmitt, a committee was appointed to audit and draw warrants for paying for the Bullett and Cook surveys. The chair appointed Messrs. Murray & P. P. Parker said committee.

Resignation of Josiah Fogg as President.

Mr. Woolfolk in the chair. Mr. Josiah Fogg tendered his resignation as president of the company.

Judge Dimmitt made some well-timed and appropriate remarks as to the energy and perseverance with which Mr. Fogg originated and had maintained this company, and offered the following resolution, which was adopted :

194 *Resolution of Thanks to Josiah Fogg for His Services to the St. L. & K. R. R. Co.*

Resolved, That, in accepting the resignation of Mr. Josiah Fogg as president of the St. Louis and Keokuk Railroad Company, the thanks of this board be tendered to him for his continued efficient services in the organization and his generous devotion of his time and private means to the management of the affairs of the company, and that to him in a large degree the present success of the road is due.

On motion of David T. Waddy, the board proceeded to the election of a president instead of Josiah Fogg, resigned, and on said election by ballot Shapleigh R. Woolfolk was duly elected president to fill the vacancy occasioned by said resignation.

Mr. Fogg tendered his resignation as a director, which was accepted, and Stephen J. Reynolds, of Pike, was nominated to fill the vacancy, and, upon being balloted for, was declared duly elected a director.

On motion, board adjourned to 8 o'clock p. m.

EVENING SESSION, *Sept.* 22, 1870.

Board met pursuant to adjournment, President Woolfolk in the chair.

Present: Messrs. Woolfolk, Dimmitt, McKenzie, P. P. Parker, Perkins, Waddy, and Murray.

195 On motion, the secretary was instructed to place upon record the contract with John S. Wolf, dated May 4th, 1870, and also the contract with John S. Wolf, entered into this day, Sept. 22, 1870, as a modification of the former contract which herein follow in regular order:

Contract with John S. Wolf, May 4th, 1870.

This agreement, made and entered into this 4th day of May, 1870, by and between the St. Louis & Keokuk R. R. Co., a corporation existing under the laws of the State of Missouri, party of the first part, and John S. Wolf, of Ottumwa, Iowa, party of the second part, witnesseth :

1st. That the party of the second part hereby agrees, for and in consideration of the payments as hereinafter specified, to do all the grading on that portion of the line of said first party's road, commencing on the line of the North Missouri railroad at or near Wentzville, and extending to the Hannibal & St. Joe road, at or near the fair grounds, near Hannibal, on a line or route to be located in conformity with the orders of the respective county courts of Ralls, Pike, and Lincoln counties, and to build all the
196 bridges, put in all the culverts and under drains, build all necessary crossings and cattle-guards, furnish all the ties, iron, chairs, fish-bar joints, and bolts, with all necessary side tracks and switches, and lay the said track- and switches—all to be done in a good and workmanlike manner, to the acceptance of the chief engineer of said road; also build all necessary buildings, such as station-houses, water tanks, engine-house, and two turntables, and put said road in complete running order ready for the rolling stock; said buildings to be built according to a plan and specification furnished by said engineer. The cost of said station building, water tanks, engine-house, and turntables not to exceed in the aggregate the sum of $65,000, but all to be built as said engineer shall direct. The bridges over the Salt and Cuivre rivers to be Howe's truss, and the abutments and piers thereof to be of first-class bridge masonry, and all other bridges and culverts to be of such character and material as the engineer of the company may determine.

2d. It is further agreed that said second party shall pay
197 for all the engineering of said road. The whole to be under the direction and control of the chief engineer of said company. The location of said road, together with all stations, station grounds, side tracks, coal tracks, turnouts, and switches, to be under the control of and subject to the direction of said chief engineer in conjunction with a committee of three directors, to be appointed by the president of the company. The maximum grade of the road shall not exceed sixty feet to the mile, except by the consent of aforesaid three directors, and all other questions arising under this contract shall be determined by the chief engineer of the company.

3d. It is also agreed that said second party shall furnish the necessary means for paying for the right of way and such grounds as it shall be necessary to purchase for the construction of said road; but said first party shall furnish the proper *men* to obtain said right of way, and all necessary and legal advice and services for ob-
198 taining the same, and use the power vested in their charter for condemning the same when necessary to do so, the expense of the same to be paid by the party of the second part.

4th. And in consideration of the foregoing work being done and performed as specified, said first party hereby agrees to pay said second party as compensation for said work the following securities, to wit:

Of Ralls county bonds, two hundred thousand dollars; of Pike county bonds, two hundred thousand dollars; of Lincoln county bonds, three hundred thousand dollars, the same to be subject to past expenses and engagements of the company, as shall be agreed

upon by the president of the company; also one million three hundred thousand dollars of first-mortgage seven per cent. gold-bearing bonds, and one million three hundred thousand dollars in common stock of said road, subject to such claims for past expenses and charges as shall be agreed upon by the president of said company, said county bonds to be taken according to the terms of the subscriptions of said counties.

199 5th. And it is further agreed that the engineer of said first party shall classify the work in Lincoln county and make up a detailed estimate of the prices to be allowed and paid for the different kinds of work, and make monthly estimates as the work progresses; the same to be made on the first of each month and paid on the 15th day of the same whenever said estimates shall amount to not less than ten thousand dollars, the company reserving the right to retain ten per cent. of each estimate as security for the faithful performance of this contract until the final completion of all the work herein contracted to be done, when a final estimate shall be made, and the final payments made, together with all retained percentage, the same to be paid within thirty days after the completion of the work and its acceptance by the company.

6th. And it is agreed that whenever the county of Lincoln shall have appropriated a sufficient amount to pay the cost of instrumental surveys through the said county, and when the bonds
200 of the county of Lincoln shall have been issued and placed in escro-, the surveys of said road between the North Missouri road and Pike county line shall be begun within ten days of the date that notice of the deposit of said bonds in escro- shall have been given to the president of the company, and the work of construction shall commence within thirty days from the completion of said survey.

7th. It is also agreed that the president of said company shall in all ways possible assist in the negotiation of all bonds specified to be taken in this contract, both county and road bonds, and shall at all times assist in making negotiations for iron and other materials, &c., and shall for that purpose visit New York or any other place thought necessary, and shall in every way render any and all assistance in his power to make such negotiations.

8th. And it is further agreed that if the Pike county bonds hereby agreed to be taken shall not be sufficient to pay for the graduation, masonry, right of way, engineering, bridging, ties, and sta-
201 tion buildings, as specified in this contract, through said Pike county, then said second party shall be entitled to any additional county bonds or the proceeds of other subscriptions that may be obtained in said Pike county, or so much thereof as may be obtained in said Pike county, or so much thereof as may be necessary to pay for the same at the prices fixed by said engineer.

9th. It is further agreed that this contract is made subject to any previous contract heretofore made by said company.

10th. It is also agreed that the work stipulated to be done under this contract shall be commenced within ten days from this date, at or near the fair grounds, on the Hannibal & St. Joe r'd, in Ralls

county, and the said road shall be completed, with the bridge over Salt river and the track laid to New London, by the fifteenth day of November, A. D. 1870, and the whole work shall progress as rapidly as the means of the company will justify, so as to insure the completion of the entire line by the first day of November, A. D. 1871:

Provided, however, that if there should be any delay or failure in obtaining any of the county bonds in any county, as specified to be taken under this contract, said second party shall have the right to suspend work in that county until the means are fully provided for the payment of the work to be done in such county in accordance with the stipulations of the orders of the several counties.

11th. It is further agreed that if the party of the second part shall fail or refuse to prosecute the work specified to be done in this contract for the term of thirty days, except for causes hereinbefore provided for, then and in that case said company shall have the right to declare this contract forfeited, together with all retained percentage.

12th. It is further agreed that this contract or any part thereof shall not be assigned nor any portion of the work herein contracted to be done relet to any subcontractor without the consent, in writing, of the president of the company.

13th. It is further agreed that the payments of monthly estimates shall be made in the different kinds of securities in the proportion that the work done bears to the whole amount of work embraced in this contract—that is to say, county bonds upon estimates for grading, masonry, and ties, and first-mortgage bonds upon the estimates for iron, track-laying, superstructure of bridges and other material, and that the stock to be paid on this contract shall be issued in equal amounts to that issued to the several counties, and the remainder of stock to be issued with the first-mortgage bonds.

14th. It is agreed that the iron to be used shall not be less than fifty pounds nor more than fifty-six pounds for lineal yard, and fish-bar joints to be used in the place of chairs on the main line of said road.

15th. The cost of preparation of the first-mortgage bonds, as well as the cost of drawing, stamping, and recording the mortgage security, shall be borne and paid by the party of the second part.

16th. It is agreed that if the work of construction shall not commence, as specified in sec. 10 of this contract, within 20 days of this date this contract shall be null and void as though it had never been entered into.

17th. It is hereby stipulated and agreed that the first-mortgage bonds to be issued on the road from the North Missouri R. R. to Keokuk shall not exceed two millions five hundred thousand dollars, and the amount to be appropriated to the portion of the road herein contracted to be built shall be one million five hundred thousand dollars, of which two hundred thousand dollars shall be appropriated to buy rolling-stock.

In witness whereof we hereunto affix our hands and seals this 4th day of May, 1870.

JOSIAH FOGG,
President St. Louis and Keokuk Railroad Co.

[Seal of St. L. & K. R. R. Co.]

N. S. DIMMITT, [SEAL.]
A. McPIKE,
JOSIAH FOGG, [SEAL.]
Committee.
JOHN S. WOLF. [SEAL.]

Attest: NATHAN H. PARKER, *Secretary.*

205 *Modification of Contract with John S. Wolff, Sept.* 22, 1870.

(Copy.)

This agreement made and entered into this 22d day of September, 1870, by and between the St. Louis & Keokuk R. R. Co., party of the first part, and John S. Wolf, of Ottumwa, Iowa, party of the second part, witnesseth: *The* whereas said parties of the first and second part entered into a certain agreement in writing, bearing date the 4th of May, 1870, touching the building of that part of the railroad of the party of the first part lying between a point on the North Missouri R. R., near Wentzville, and a point on the Hannibal & St. Joe R. R., near Hannibal, which writing is now here present; and whereas said contract contains certain provisions objectionable to said party of the second part, some of which he is desirous of having wholly abolished and others of having modified; and whereas the party of the first part desires the modification of certain other parts of said contract, the provisions of which are objectionable to it;

Now, therefore, in consideration of the consent given by
206 each of the parties hereto to the changes in said contract desired by the other, it is hereby contracted and agreed by and between the said parties of the first and second part, as follows, viz:

At the instance and by the desire of the party of the second part, the sections of said contract, in writing, numbered, respectively, 7, 9, and 12 (seven, nine, and twelve), shall be, and are hereby, wholly abolished and vacated and made of no effect, and the "past expenses and engagements of the company," mentioned in and contemplated by the section numbered 4 (four) of said contract, to which by the terms of said section 4 (four) the securities therein mentioned were made subject, are hereby ascertained and fixed at the sum of $19,662.75, the items of all which are set forth and specified in an order of the board of directors of the party of the first part, this day made and put of record on the books of said company, and it is farther agreed between the parties hereto that the party of the second part,

as soon as the rails of the said road are laid entirely across the
207 county of Ralls, shall pay and deliver to said party of the first part county bonds issuable to him sufficient at par to

pay and satisfy said expenses and engagements. It is further agreed between the parties hereto that in addition to the other securities payable to said party of the second part, under said contract, that the said party of the second part shall have the benefit of all sums of money arising from subscriptions to the capital stock of said company, subscribed or to be subscribed specifically for the construction of that part of said road between the North Missouri R. R. and the Lincoln county line; and at the instance of and by the desire of the party of the first part it is agreed as follows: In every instance in which any act or duty is by the terms of said contract required to be performed by the "president" of the party of the first part, the same shall be performed by the board of directors of the party of the first part or by such agent as said board may appoint
208 and depute, and wherever the word "president" occurs in said contract the same shall hereafter be read "the board of directors." The section numbered 13 (thirteen) of said contract is hereby altered and modified so as to read and be as follows, viz:

"13. It is further agreed that the payments of monthly estimates shall be made in the different kinds of securities in the proportion that the work done bears to the whole amount of work embraced in this contract; that is to say, county bonds upon the estimates for grading, masonry, and ties, and 1st mortgage bonds upon the estimates for iron, track-laying, superstructure of bridges and other material. The corporate stocks to be issued to the party of the second part shall be issued and delivered to him as soon as this contract is fully completed on his part and the road ready for the cars the entire distance between the starting point at or near Wentzville and the ending point, near Hannibal, and henceforth for all the purposes of said contract the said section numbered "13" as
209 hereby modified shall be taken and held as section "13" of said original contract, and anything contained in said section 13 of said original contract inconsistent with the section as now modified is hereby waived, abrogated, and annulled.

In testimony whereof the said party of the second part hath hereunto set his hand and seal, and the party of the first part has caused the same to be signed by the president, and the seal of the company to be affixed, and to be countersigned by its sectetary this the day and year in that behalf first aforesaid.

[Seal of St. L., H. & K. R. R. Co.]

(Signed) JOHN S. WOLF. [SEAL.]
S. R. WOOLFOLK,
Pres. of St. L. & K. R. R. Co.

Attest: NATHAN H. PARKER, *Secretary.*

BOWLING GREEN, MO.,
May 24th, 1871—one o'clock p. m.

Board met pursuant to adjournment, President Woolfolk in the chair.

Present: Same directors as this morning.

Resolution Declaring John S. Wolff's Contract Forfeited.

On motion of Mr. Murray, the following preamble and declaration was duly adopted, to wit: Whereas John S. Woolf on
210 the 4th day of May, 1870, entered into a contract in writing with the St. Louis & Keokuk Railroad Company in and by which he bound himself to said company in consideration of certain "securities" therein mentioned, to be paid on the terms and subject to the limitations in said written contract stipulated and specified, to construct that portion of the company's road commencing on the line of the North Missouri railroad, at or near Wentzville, and extending to the Hannibal & St. Joe railroad at or near the fair grounds near Hannibal, on a line to be located in conformity with the orders of the respective county courts of Ralls, Pike, and Lincoln counties then in force, and to commence said work within ten days from the said 4th day of May, 1870, at or near the fair grounds, on the Hannibal and St. Joe road, in Ralls county, and to complete the construction of said road with the bridge over Salt river and the track to New London by the 15th day of November, 1870, and prosecute the whole work as rapidly as the means of the company would justify, so as to insure the completion of the entire line by the 1st day of November, 1871; and whereas without any default
211 on the part of this company the said Woolf, on the 26th day of October, 1870, represented and showed to this company that he would be unable to complete said road, with the bridge over Salt River and the track to New London, by the said 15th day of November, 1870, and this company did on said 26th day of October, 1870, at his solicitation and request, without consideration, extend the time therefor to the 20th day of May, 1871; and whereas prior to the 20th day of May, 1871, aforesaid the said John S. Woolf at sundry and divers times declared his utter inability to complete said contract, and avowed his intention of abandoning the work on said road; and whereas he did thereafter, to wit, on the 4th day of May, 1871, without any default on the part of this company, actually abandon the work on said road, by withdrawing all his hands, teams, and implements for work therefrom; and whereas the said road is now totally abandoned and the proprietary rights of the company therein are likely to suffer irreparable injury thereby if speedy means
212 are not taken to preserve the same: We, therefore, deem it our duty immediately to take possession of the said road and everything pertaining thereto in which this company has any right, in order to the preservation and completion of said road.

And we hereby declare that the said John S. Woolf, having not only failed to comply with his said contract by completing said road,

with the bridge over Salt river and the track to New London, by the time therein specified, but having also abandoned the work on said road by withdrawing all his hands, teams, and implements therefrom, that he has thereby forfeited his said contract.

2nd Resolution Declaring Contract with John S. Wolf Forfeited.

NEW LONDON, *June 13th* 1871—one o'clock p. m.

The board met pursuant to adjournment, President Woolfolk in the chair.

Present: The same members of the board as this a. m.

On motion of S. F. Murray the following preamble and resolution was duly adopted, to wit: "Whereas John S. Woolf of Ottumwa, Iowa, heretofore to wit, on the 4th day of May, 1870, entered into a contract in writing with the St. Louis and Keokuk Railroad
213 Company, in and by which he bound himself to said company, in consideration of certain securities therein mentioned, to be paid on the terms and subject to the conditions in said written contract stipulated and specified, to construct that portion of the company's road commencing on the line of the North Missouri railroad at or near Wentzville and extending to the Hannibal & St. Joe railroad at or near the fair grounds near Hannibal, on a line to be located in conformity with the orders of the respective county courts of Ralls, Pike, and Lincoln counties then in force; which said contract was thereafter modified by the written agreement of said parties dated the 22d day of September, 1870;

And whereas said contract, modified as aforesaid, contained, among other provisions, the following, to wit: '11th. It is further agreed that if the party of the second part shall fail or refuse to prosecute the work specified to be done in this contract for the term of thirty days, except for causes hereinafter provided for, then and in that case said company shall have the right to declare this
214 contract forfeited, together with all retained percentage;'

And whereas said John S. Woolf heretofore, to wit, on the 4th day of May, 1871, totally abandoned the work specified to be done in said contract by withdrawing all his hands, teams, and implements of work therefrom, and has since failed to prosecute the work specified to be done in said contract for more than the term of thirty days consecutively without any default on the part of this company or without any of the causes therefor in said contract specified:

Now, therefore, in pursuance of the right mentioned in said section 11, above recited, this company declare that the said John S. Wolf has, by his abandonment of the work specified to be done under said contract and his failure to prosecute the same for more than thirty days consecutively from and after the said 4th day of May, 1871, without cause as aforesaid, forfeited his said contract, together with all retained percentage now in the hands of the company retained under the provisions of said contract."

215 *Contract with the Mo. & Iowa R'y Cons. Co.*

Memorandum of agreement made the 12th day of April, A. D. 1872, by and between the St. Louis and Keokuk Railroad Company, a corporation existing under and by virtue of the laws of the State of Missouri, party of the first part, and the Missouri and Iowa Railway Construction Company, a corporation existing under and by virtue of the laws of the State of Iowa, party of the second part, witnesseth:

That whereas said first party is engaged in constructing a railroad at or near Dardenne, in St. Charles county, Missouri, to or near Hannibal, Marion county, in said State, via Troy, Bowling Green, and New London; and whereas said first party is possessed of a portion of the means for the completing of said road, consisting in county, township, and individual subscription, but has not sufficient funds to complete said road and put the same in operation: Now, therefore, in consideration of the covenants and stipulations herein agreed to be good, the said second party
216 hereby agrees to assume and pay said first party — which it is agreed are not in any event to exceed $19,000 in all, not including, however, the claims of John S. Wolf.

Said second party also agrees to assume and carry out the contracts made prior to March 26th, 1872, for grading of said line with the following parties, viz., Messrs. Parker and Chaelly, Parker and Doan, Cole and H. Blair and Sons, Pean and Friar, Shepard and Burkhead, embracing in all about 20 miles of said grading; also the contract for bridging in Ralls county with Mr. Van Ness, which said contract is understood to be nearly complete; and it is further understood *to be nearly completed and it is further understood* that the above-mentioned limit of the liabilities of (the?) first party to be assumed by second party includes any and all debts which may be owing to said contractors or any other persons or corporations except John S. Wolf.

Said second party further agrees to complete the grading,
217 bridging, and tieing of said road, furnishing the rails, which are to be of approved pattern and weight, not less than 50 lbs. per yard and of good quality, the chairs, sleepers, bars and bolts, spikes, frogs and side tracks, switches, station-houses, water tanks, engine-houses, turning tables, locomotives, passenger cars, baggage, platform, box and stock and cattle cars, all in sufficient quantities and of sufficient — to do all the business which may be offered, with reasonable promptness and despatch. Said second party further agrees to have the cars running over the whole length of said road from Dardenne to Hannibal within one year from the date of this contract and as much sooner as the said work can be reasonable accomplished.

The contract is based upon the understanding that said first party is to consolidate its line of road with the Pike County Short Line road. The said first party hereby agrees to consolidate with

said Pike County Short Line Railroad Company as soon as the same can be legally done.

In part payment for the work to be done by the second party said first party hereby agrees to turn over all the assets it now has on hand or may hereafter acquire by the consolidation with the said *road* Pike County Short Line Railroad Company or otherwise to said second party which said assets are understood to include all county and individual subscription. Said first party also agrees to pay said second party, for completing and equiping said road, as hereinbefore mentioned, $20,000 per mile of main and side track in the first-mortgage bonds of said first party, bearing interest at the rate of 8 per cent. in currency or seven per cent. in gold, said rate of interest to be rendered by said second party; also agrees to pay for the work for said $20,000 per mile of main and side track in the full-paid capital stock of said first party less the amount of stock heretofore legally issued and the amount to be issued for fully paid valid subscription, which have been made and are now being paid as called for.

It is understood that the total amount of stock issued and to be issued on the subscription above named is not to exceed 8,090 shares, and that the total issue of stock and of bonds is not to exceed $20,000 of each per mile of main and side track.

It is further mutually agreed and understood that the payments for the work herein provided for are to — made as the work progresses—that is to say, the assets on hand and the proceeds of the subscription aforesaid are to be paid to second party in accordance with the various order- of the counties relating thereto on the estimates of the chief engineer of said first party on or about the 5th of each month.

For the amount of grading and bridging done and number of ties delivered during the preceeding — it is further understood that said first party is not to be called upon to pay over the bonds or proceeds of Peno township subscription before track-laying is commenc*est* in Ralls county, and then said proceeds shall not be called for faster than are equal in value to the bonds called *is* obtained and held in Ralls county.

It is further agreed that the chief engineer of said first party shall, between the first and fifth of each month, make an estimate of the total amount of work done on said line and of the *cross* and *rail*-ing stock and other materials furnished, and also the total cost of the said road when completed and equipped as provided for in this contract, and second party shall then be entitled to receive and said first party hereby agrees to pay, when called for, the same proportion of stock and bonds herein agreed to be paid as said estimate of work done and material, &c., furnished bears to the total cost of said chief engineer less 10 per cent., which percentage said first party is to retain until a section of at least ten miles *are* completed, when said second party shall become entitled to the said retained percentage. It is also mutually agreed and understood that the second party shall be entitled to the possession and occupancy

of the road of first party from and after the execution of this contract.

(Stamp.) Said second party hereby agrees to commence the work herein contracted for as soon as the consolidation with the said Pike County Short Line R. R. Company, here-before mentioned, is completed. Said work shall be prosecuted vigorously in all its departments with a view of completing the same at the earliest possible day; and said second party agrees that if at any time the work on said line shall be suspended or shall not be progressing satisfactorily to said first party notice thereof shall be given to said second party, and after 30 days, if said work is still suspended or not
222 progressing satisfactorily, said first — shall have the right to declare this contract forfeited.

All of the work herein contracted for and all of the rolling stock and other materials to be furnished and the completion of the entire line of road herein named is all to be finished up in a good and workman-like manner equal to the average of new first-class roads and to the satisfaction and expectations of the president and chief engineer of said party of the first part.

Said second party agrees to be to the expense of draughting, engraving, stamping the bonds to be issued on said road, and all expense of preparing and recording of mortgage to secure the same; also to provide for and pay the current monthly expenses of said first party to an amount not exceeding $500 per month; and said first party hereby agrees not to create any further indebtedness or make itself liable to an amount exceeding — sum per month
223 without first obtaining the consent thereto in writing of said second party.

It is further agreed that said second party is to recommend 5 persons for members of the board of directors of said first party; and said first party agrees to elect as a part of its board the persons so recommended or nominated on the first Monday in May, 1872, and from time to time as the work progresses, and second — thereby comes entitled to the stock herein agreed to be paid. First party is to procure, if desired by second party, the resignation of some of its directors, and shall fill vacancies by persons nominated by second party, and second party shall not be entitled to ask any greater participation or representation in said board than the amount of stock it has become entitled to, had in it, bears to the whole amount, all full-paid stock, belonging to other persons or corporate subscribers.
224 This contract is to be accepted and executed by said second party hereto on or before the 12th day of April, 1872, or otherwise it is to be void and of no effect.

In witness hereof the parties are to have signed and executed these presents by their respective presidents, duly authorized thereto, on the time and year above, then to have caused the same to be duly

attested by the seals of the said parties hereto and the signatures of their respective secretaries.

[SEAL.] S. R. WOOLFOLK,
President St. Louis & Keokuk R. R. Co.
Attest: N. C. SHELDON,
Secretary St. Louis & Keokuk R. R. Co.
MISSOURI & IOWA CONSTRUCTION CO.,
By W. W. WALKER, *Pres't.*
Attest: WM. BUCHANAN,
Secretary Mo. & Io. Railway C. Co.

At a meeting of stockholders of the St. Louis and Keokuk R. R. Co., held at Troy, Lincoln Co., Missouri, May 6, 1872, the following resolution was adopted, viz:

225 *Resolution Ratifying Contract with the Mo. & Iowa Railway Construction Co.*

On motion of Nathan S. Dimmitt it is unanimously resolved that the contract with the Missouri and Iowa Railway Construction Company, executed on the 12th day of April, 1872, by the authority of the board of directors, by S. R. Woolfolk, president of this company, be, and the same is hereby, ratified and confirmed.

Names of Directors Elected at Stockholders' Meeting May 6, 1872.

The certificate of said judges of said election referred to in said report of said stockholders' meeting and thereto attached is in the words and figures following, to wit: "We, the undersigned, judges of the election for thirteen directors of the St. Louis and Keokuk Railroad Company, certify that said election was held at the courthouse, in the town of Troy, Lincoln county, Missouri, on Monday, the 6th day of May, 1872, between the hours of 10 o'clock a. m. & 2 o'clock p. m. of that day, and that at said election so held as aforesaid the following votes were cast for the following-named gentlemen as directors as aforesaid, to wit, and was all the stock voted:

226 Shapleigh R. Woolfok, one thousand and eighty-two votes (1,082); Walton Perkins, one thousand & sixty-two votes (1,062); David T. Waddy, one thousand & sixty-two votes (1,062); James D. Pitt, one thousand and sixty-two votes (1,062); Stephen J. Reynolds, one thousand & sixty-two votes (1,062); Nathan S. Dimmitt, one thousand & eighty-two votes (1,082); Wilson B. Elliott, one thousand & eighty-two votes (1,082); John W. Barrett, one thousand and eighty-two votes (1,082); George Green, one thousand & eighty-two votes (1,082); George Douglas, one thousand & eighty-two votes (1,082); John F. Ely, one thousand and eighty-two votes (1,082); Samuel P. Wisner, one thousand & eighty-two votes (1,082); William W. Walker, one thousand & eighty-two votes (1,082); George

D. Merriwether, twenty votes (20); Samuel F. Murray, twenty votes (20); Alex. K. Wilson, twenty votes (20).

Given under our hands this 6th day of May, 1872.

FRANCIS C. CAKE,
EUGENE N. BONFILS,
AUGUSTUS C. SHELDON, *Judges.*

And we, the undersigned, judges of the election as aforesaid, hereby certify that we have counted all the votes cast at said election, and that Shapleigh R. Woolfok, Walton Perkins, David T. Waddy, James D. Pitt, Stephen J. Reynolds, Nathan S. Dimmitt, Wilson R. Elliott, John W. Barrett, George Green, George Douglas, John F. Ely, Samuel P. Wisner, and William W. Walker each received a majority of all the votes cast at said election; and we hereby declare and certify that they are hereby elected directors of said St. Louis and Keokuk Railroad Company.

227

Given under our hands this 6th day of May, 1872.

AUGUSTUS C. SHELDON,
FRANCIS C. CAKE,
EUGENE N. BONFILS, *Judges.*"

TROY, LINCOLN CO., MO., *May* 6, 1872.

The board of directors of the St. Louis and Keokuk Railroad Company elected this day, May 6th, 1872, to wit, Shapleigh R. Woolfolk, Walton Perkins, David T. Waldy, James D. Pitt, Stephen J. Reynolds, Nathan S. Dimmitt, Wilson B. Elliott, John W. Barrett, George Green, George Douglas, John F. Ely, Samuel P. Wisner, William W. Walker, met at the court-house, in Troy, Missouri, and was called to order by S. R. Woolfolk, and, on his motion, S. J. Reynolds was elected chairman *pro tem.* and N. S. Dimmitt secretary *pro tem.*

228

Resolution Authorizing Execution of Deed Transferring the St. L. & K. R. R. to the St. L., H. & K. R. R. Co.

PLANTERS' HOUSE, HANNIBAL, *March* 4, 1873.

The directors of the St. Louis and Keokuk Railroad Company met at 9 o'clock p. m., pursuant to adjournment, the same directors present, along with N. S. Dimmitt, the vice-president, S. R. Woolfolk, presiding.

On motion, the following resolution was unanimously adopted:

Resolved, That the president and secretary be directed to call the annual meeting and to be held at the Planters' House, St. Louis, on the first Monday in May, 1873.

On motion of S. P. Wisner and seconded by N. S. Dimmitt, the following resolution was unanimously adopted, to wit:

Resolved, That the contract and deed of sale now here submitted to this meeting, dated March 4, A. D. 1873, by which the St. Louis and Keokuk Railroad Company has granted, bargained, sold, and conveyed all its corporate property, rights, privileges, assets, credits,

and franchises and appurtenances to the St. Louis, Hannibal and Keokuk Railroad Company, be, and the same is hereby, ap-
229 proved, ratified, and confirmed, and the president and secretary are hereby authorized and empowered to execute said deed of conveyance and deliver the same to said St. Louis, Hannibal and Keokuk Railroad Company.

On motion, the meeting adjourned.

Attest: WM. BUCHANAN, *Sec'y.*

Letter of W. W. Walker, Proposing Modification of Contract with Mo. & Iowa R'y Const. Co.

To the prest., directors, and stockholders of the St. Louis and Keokuk R. R. Co.

GENTLEMEN: At the time your company entered into contract with the Mo. and Iowa Railway Construction Company, on the 12th April, 1872, R. R. iron was selling at about seventy-three to seventy-five dollars per ton, and the money market was easy and R. R. bonds were meeting with a ready and rapid sale. Almost immediately after that time iron begun to advance, and all of the iron we have thus far laid has cost us over ninety-seven dollars delivered in Hannibal. Before any portion of the road could be completed so as to furnish a basis for an issue of bonds, the money
230 market had become so stringent that no bonds could be sold in this country, and in consequence the construction company has had to pay more than one hundred and twenty thousand dollars for iron in cash, all of which it was expected when the contract was made would be provided for out of the sale of bonds. In view of these facts and numerous other unfor-seen difficulties which the construction company has had to encounter, "I would make the following proposition in behalf of the construction company, viz., that your company relieve the construction company from the payment of that portion of the nineteen thousand six hundred and sixty-two dollars and seventy-five cents debts of your company still unpaid, and this company will relinquish of your stock to be received under the contract three dollars for each dollar of debt so assumed by your company, and with that stock or its proceeds your company provide for said debts."

If this proposition be accepted, I would ask that your com-
231 pany authorize your president, secretary, and treasurer to put the matter in proper shape.

Yours respectfully,

(Signed) W. W. WALKER,
President Mo. & I'a R'y Constr. Co.

St. Louis, Mo., 5, 5, '73.

Resolution Accepting Proposition to Modify said Contract.

On motion of John F. Ely the following resolution was unanimously adopted, to wit:

Resolved, That the proposition of the Missouri and Iowa Railway Construction Company, in reference to this company's providing for the nineteen thousand six hundred and sixty-two dollars and seventy-five cents of its own indebtedness as it stood April 12th, 1872, and allowing this company to retain from the payments to be made to said construction company three dollars of this company's stock for each dollar of debt still remaining unpaid, be accepted by this company, and that the president, secretary, and treasurer of this company are hereby authorized to make such supplementary addition to said contract as in their judgment may be needed to carry into effect said proposition.

Minute-Book of the Directors and Stockholders of the St. Louis, Hannibal and Keokuk R. R. Co. Put in Evidence.

III. Record-book of the minutes and proceedings of the in-
232 corporators, directors, and stockholders of the St. Louis, Hannibal & Keokuk R. R. Co.

The Same Stipulation Made in Regard to this Book that was Made in Regard to St. L. & K. R. R. Co. Book.

The same stipulation by counsel is made in regard to this record-book as was made in reference to the preceeding.

Counsel cites from said record the articles of association and certificates of incorporation as set forth on pages 11 to 26, both inclusive; also minutes of meetings of directors at the meeting held June 11th, 1872, on pages 27, 28, 29, 30, 31; also minutes on pages 33, 34, 35, 36, 37, 38, 40, 53, 54, 55, down to the beginning of record of meeting of directors of May 6th, 1873; also minutes on pages 98, 99, 103, 107, 108, 117, 118, 154, 157, 181, 188, 198, 205, 189 to 193.

Objection to the Admission of said Book in Evidence.

Same objection is interposed by counsel for trustee.

Articles of Association of the St. L., H. & K. R. R. Co.

Articles of incorporation of the St. Louis, Hannibal and Keokuk Railroad Company.

Article 1. We, George Greene, William W. Walker, George Douglas, John F. Ely, William Buchanan, John W. Barrett, Walton Perkins, David T. Waddy, Shapleigh R. Woolfolk, Nathan S. Dimmitt, Wilson B. Elliott, Stephen J. Reynolds, and James D.
233 Pitt, together with such other persons as may hereto subscribe their names or hereafter become stockholders under this organization, do hereby associate ourselves as a body corporate in law and form a company, to be called and known as the St. Louis, Hannibal and Keokuk Railroad Company, for the purpose of con-

structing, maintaining, owning, and operating a railroad with one or more tracks and branches for public use in the conveyance of persons and property, and for that purpose we make, sign, and adopt these articles of association, and have hereunto subscribed our names and several places of residence, and claim for such corporation all the rights, powers, privileges, and immunities granted to and conferred upon like corporations by virtue of the laws of the State of Missouri, under chapter 37, entitled corporations, and article II, entitled railroad companies, of the Statutes of the State of Missouri, and the several acts amending the same,

Article 2d. The name of this company shall be the "St.
234 Louis, Hannibal and Keokuk Railroad Company," and it shall have power to survey, locate, construct, maintain, and operate a main line of railroad with one or more tracks from the city of St. Louis, and running thence in a northerly direction through the counties of St. Louis, St. Charles, Lincoln, Pike, Ralls, Marion, Lewis, and Clarke, in said State of Missouri, to a point near the northeast corner of said State, opposite to the city of Keokuk, in the State of Iowa, a distance of about one hundred and eighty miles, with a branch in Lincoln county, from some point at or near Troy to the coal fields in said county, a distance of about ten miles, and also another branch from some point near where the main line crosses Mill creek, in said Lincoln county, up or near the valley of said creek, a distance of about five miles, making the length of said railroad, including said branches, about one hundred and ninety-five miles, and said main line of railroad shall pass through or near Troy, in
235 Lincoln county; Prairieville, Frankfort, and Bowling Green, in Pike county; New London, in Ralls county, and Hannibal, in Marion county.

Article 3d. This corporation shall continue for one hundred years, with the power of renewal and of perpetual succession, and the capital stock of said company shall be six millions of dollars, which shall be divided into shares of one hundred dollars each.

Article 4th. The affairs of this company shall be managed by a board of thirteen directors, a majority of whom, including the president or vice-president, shall constitute a quorum. The persons named in the first article hereof shall be the board of directors, until the first Tuesday in March, in the year 1873, and thereafter said board of directors shall be chosen annually by a majority of the votes of the stockholders at an annual election, which shall take place at the principal office of the company on the first Tuesday in March in each and every year, in such manner as may be prescribed in the by-laws of the company, and they shall continue to be directors
236 until others are elected in their places.

Article 5th. The officers of the company shall consist of a president, vice-president, treasurer, and secretary and of such other officers as the board of directors shall deem expedient, all of whom shall be appointed by authority of the directors.

Article 6th. The board of directors shall have full power and authority to carry out the objects of this incorporation, shall have power to authorize the president and secretary to execute a mortgage or

deed of trust on the whole or any part of the property of this company, to secure the payment of the bonds thereof in such amounts and upon such terms and conditions as the directors may think best. The said directors may prescribe the manner in which this company's railway may be used, may regulate the operating and running of trains, and shall have full and exclusive power to regulate
fares and the rates of toll or tariffs for the transportation of
237 property and passengers over this company's railway.

Article 7th. In the election of directors each stockholder shall be entitled to one vote for each share of stock held by him, and may vote in person or by proxy, and vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the company, and the inspectors of the first election of directors shall be appointed by the board named in the articles of association. No person shall be a director or member of the executive committee unless he is a stockholder, owning stock absolutely in his own right and qualified to vote for directors at the election at which he is chosen.

Article 8th. There shall be an executive committee, consisting of the president, vice-president, and one other director, appointed by the board of directors, and shall have such powers and perform such duties as the by-laws shall prescribe or the board of directors may direct.

Article 9th. The principal office of this company shall be at Hannibal, in the State of Missouri, but the same may be removed to such other place as may be deemed best by the board of directors.

238 Article 10. This corporation shall have power to take and hold real estate and to make contracts with individuals or with corporations for the purchase, sale, or mortgage of real or personal property, for the performance of labor or furnishing materials, or for such other purposes as may be necessary to carry into effect the objects of this incorporation *to;* may have and use a corporate seal, which it may change or alter at pleasure; may sue and be sued and enter into contracts in its corporate name, and may from time to time make all such by-laws and perform such other acts as may be deemed expedient not inconsistent with the laws of Missouri and these articles.

Article 11. The private property of the individual members of this corporation is hereby declared to be exempt from liability for the debts or other liabilities of the corporation.

Article 12. The president may call meetings of the board of directors or executive committee at such times and places as he may think for the interests of the company on giving ten days'
239 notice, mailed to all the directors or by publishing a notice for two weeks previous to said meeting in one or more newspapers in the county where the principal office is located, but meetings may be held without notice when all the members are present, but at all meetings of stockholders, directors, or executive committee a true record of the proceedings shall be kept and entered by the secretary on the records of the company at the principal office.

Article 13. All deeds and mortgages shall be executed in the name of the corporation by the president thereof, be sealed with the corporate seal, and attested by the secretary.

Article 14. Shares of stock in this corporation are declared to be personal property and transferable only on the books of the company at the request of the holders thereof.

Article 15. These articles may be altered or amended by the unanimous vote of all the directors or by the consent in writing of so many of the stockholders as own two-thirds of all the stock, which said consent shall be duly recorded on the records of the company.

Article 16. Any director of this corporation may be removed by the unanimous vote of the other directors.

240 To the end that these articles of incorporation may be filed and recorded, as required by law, and become operative and effective, we, the undersigned corporators, have hereunto set our hands and opposite thereto written our places of residence this third day of June, one thousand eight hundred and seventy-two. The undersigned further agree. each for himself, to subscribe for and purchase of the capital stock of said company the number of shares set opposite our respective names.

Signed: Geo. Greene, Cedar Rapids, Iowa, No. shares, 10.
Wm. W. Walker, " " " " " ten, 10.
Geo. Douglas, " " " " " " 10.
Jno. F. Ely, " " " " " " 10.

Missouri and Iowa Railway Construction Company, by W. W. Walker, pres't, eighteen hundred and sixty shares (1860). J. W. Barrett, Hannibal, Missouri, ten shares (10). S. R. Woolfolk, Troy, Missouri, ten shares (10). D. T. Waddy, Troy, Missouri, ten shares (10). Walton Perkins, Troy, Missouri, ten shares (10). N. S. Dimmitt, New London, Missouri, ten shares (10). William Buchanan, Hannibal, Missouri, ten shares (10). Samuel P. Wisner, Cedar Rapids, Iowa, one share (1). A. J. Reynolds, Bowling Green, Mo. (10). Jas. D. Pitt, Frankford, Mo., one share (1). W. B.
241 Elliott, Ralls Co., Mo., one share (1).

STATE OF IOWA, } ss:
Linn County, }

Be it remembered that on this 3rd day of June, A. D. 1872, before me, a notary public in and for said county, personally appeared George Greene, Wm. W. Walker, Geo. Douglas, and John F. Ely, to me known to be the identical persons whose names are subscribed to the within and foregoing articles of incorporation as part of the corporators therein named, and acknowledged the making and execution of the same was their voluntary act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal notarial the date last above written.

[SEAL.] (Signed) CHAS. E. WALKER,
Notary Public.

STATE OF MISSOURI, } ss:
County of Lincoln, }

Be it remembered that on this 10th day of June, A. D. 1872, before me, a clerk of the county court within and for said county and State aforesaid, personally appeared John W. Barrett, Shapley R. Woolfolk, David T. Waddy, Walton Perkins, Nathan S. Dimmitt, and William Buchanan, and Samuel P. Wisner, to me known to be the identical persons whose names are subscribed to the
242 within and foregoing articles of incorporation as part of the corporators therein named, and acknowledged the making and execution of the same, and that the making and execution of the same was their voluntary act and deed for the purposes therein mentioned.

In witness whereof I, Francis C. Cake, clerk as aforesaid, have hereunto set my hand and seal of office, in Troy, in said county, the day and year aforesaid.

(Signed) FRANCIS C. CAKE,
[SEAL.] *Clerk Lincoln County Court, Mo.*

STATE OF MISSOURI, } ss:
County of Pike, }

Be it remembered that on this tenth day of June, A. D. 1872, before me, a notary public within and for said county and State aforesaid, personally appeared Stephen J. Reynolds, to me known to be the identical person whose name is subscribed to the within and foregoing articles of incorporation as one of the corporators therein named, and acknowledged the making and execution of the same was his voluntary act and deed for the purposes therein mentioned.

In witness whereof I, Cyrus W. Williams, as aforesaid, have hereunto set my hand and affixed my seal notarial, at my office, in Bowling Green, in said county, the day and year aforesaid.

[SEAL.] (Signed) CYRUS W. WILLIAMS,
Notary Public, Pike Co., Mo.

243 STATE OF MISSOURI, }
County of Pike. }

Be it remembered that on this tenth day of June, A. D. 1872, before me, a notary public within and for said county and State aforesaid, personally appeared James D. Pitt, to me known to be the identical persons whose names *are* subscribed to the within and foregoing articles of incorporation as part of the corporators therein named, and acknowledged the making and execution of the same as *their* voluntary act and deed for the purposes therein mentioned.

In witness whereof I, E. C. Turnbull, as aforesaid, have
[SEAL.] hereunto set my hand and affixed my seal notarial, at my office, in Frankfort, in said county, the day and year aforesaid.

(Signed) E. C. TURNBULL,
Notary Public.

STATE OF MISSOURI, }
County of Ralls, }

Be it remembered that on this tenth day of June, A. D. 1872, before me, a notary public within and for said county and State aforesaid, personally appeared Wilson B. Elliott, to me known to be the identical person whose name is subscribed to the within and
244 foregoing articles of incorporation as one of the corporators therein named, and acknowledged the making and execution of the same as his voluntary act and deed for the purposes therein mentioned.

In witness whereof I, E. W. Southworth, as aforesaid, have hereunto set my hand and affixed my seal notarial, at my office, in New London, in said county of Ralls, the day and year aforesaid.

[SEAL.] (Signed) E. W. SOUTHWORTH,
Notary Public.

STATE OF MISSOURI, }
County of Lincoln, } *ss:*

We, David T. Waddy, Walton Perkins, and John W. Barrett, on oaths state that we are members of the board of directors of the St. Louis, Hannibal & Keokuk Railroad Company, duly elected and qualified as such under the articles of association hereunto annexed; that the amount of stock required by section (3) three, article two (2), of chapter thirty-seven (37), Wagner's Missouri Statutes, entitled "Corporations, private," has been in good faith subscribed to the capital stock of said company and five per cent. paid in cash thereon, and that it is intended in good faith to construct, maintain,
245 and operate the road mentioned in said "articles of association."

In witness whereof we have hereunto set our hand- this 10th day of June, A. D. 1872.

(Signed) DAVID T. WADDY.
" WALTON PERKINS.
" JOHN W. BARRETT,

Subscribed and sworn to before me this 10th day of June, A. D. 1872. Witness my hand and official seal the day and year aforesaid.

[SEAL.] (Signed) FRANCIS C. CAKE,
Clerk Lincoln County Court, Mo.

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigel, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true and full copy of the "articles of incorporation of the St. Louis, Hannibal and Keokuk Railroad Company," filed June 13th, 1872, as appears by comparing the same with the orignal of said articles, now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed

seal. Done at this office this 13th day of June, A. D. eighteen hundred and seventy-two.

[SEAL.] (Signed) EUGENE F. WEIGEL,
Secretary of State.

246 *Proceedings of the Board of Directors of the St. Louis, Hannibal and Keokuk Railroad Company.*

The board of directors of the St. Louis, Hannibal and Keokuk Railroad Company met at the Planters' House, Hannibal, county of Marion, and State of Missouri, on the 11th day of June, 1872, at 2 o'clock p. m.

Present, W. W. Walker, George Douglas, N. S. Dimmitt, S. J. Reynolds, J. D. Pitt, W. B. Elliott, J. W. Barrett, and Wm. Buchanan.

The call for the meeting having been read, it being in words and figures as follows:

"We, the undersigned, directors of the St. Louis, Hannibal and Keokuk Railroad Company, hereby unite in calling and appointing a meeting of the directors of said St. Louis, Hannibal and Keokuk Railroad Company, to be held at the Planters' House, in the city of Hannibal, Mo., at 2 o'clock p. m., on the 11th day of July, for the purpose of electing officers of said company, and for the transaction of any other business which may be presented. All of the directors of said company join in this call, as witness our hands this 20th day of June, 1872."

(Signed) "GEORGE GREEN.
"W. W. WALKER.

247 (Signed) "GEO. DOUGLAS.
"WM. BUCHANAN.
"S. R. WOOLFOLK.
"D. T. WADDY.
"J. D. PITT.
"J. W. BARRETT.
"JOHN F. ELY.
"WALTON PERKINS.
"N. S. DIMMITT.
"S. J. REYNOLDS.
"W. B. ELLIOTT."

It was moved by Wm. Buchanan and seconded by W. W. Walker that Judge Dimmitt act as president of the meeting. It was moved and seconded that Wm. Buchanan act as secretary of the meeting. The chairman stated that the first business was the election of officers.

Election of Officers of the St. L., H. & K. R. R.

On motion, S. J. Reynolds was appointed teller. The meeting then — to ballot for president. The teller announced that George Greene had received 8 votes, and he was then duly declared as president. The meeting proceeded to ballot for vice-president. The

teller announced that S. R. Woolfolk had received 8 votes. He was then declared as vice-president.

The meeting proceeded to ballot for secretary of the company. The teller announced as the result of the ballot that Wm. Buchanan had received 7 votes. He was then declared as secretary.

The meeting then proceeded to ballot for treasurer. The
248 teller announced that S. P. Wisner had received 8 votes, and — was then declared as treasurer of the company.

Names of Executive Committee.

The meeting then proceeded to ballot for an executive committee, when the teller reported the names of the following, each having received 8 votes, and they were then declared duly elected: George Green, S. R. Woolfolk, and W. W. Walker.

The following resolution was presented by W. W. Walker, and on motion by him and seconded by W. B. Elliott was unanimously adopted, to wit:

Resolution Authorizing the Purchase of the Property of the St. Louis & Hannibal R. R. Co.

Resolved, That the executive committee of this company, or a majority of the same, be, and is hereby, authorized to purchase the right of way, grading, bridging, and ties and all other rights, property, and franchises of the St. Louis and Keokuk Railroad Company, and also of the Pike County Short Line Railroad Company, and to pay for the same in the stock and bonds of this company, in such manner and on such terms as they shall deem for the best interests of this company; also to take such action as said committee shall deem best looking to the early completion of those
249. portions of the line between St. Louis and the St. Louis, Kansas City and Northern Railroad and between Hannibal and West Quincy.

The following resolution was presented by J. W. Barrett, and, on motion by him and seconded by N. B. Elliott, was unanimously adopted, to wit:

Resolution Authorizing Mortgage of All the Property of the St. L., H. & K. R. R. Co.

Resolved, That the president, secretary, and treasurer of this company be, and they are hereby, authorized and directed to make, seal, and execute a first mortgage or deed of trust, to such trustee or trustees as they or a majority of them may think best, on all the railroads, property, franchises now possessed or acquired or which may hereafter be acquired by purchase, consolidation, grant, or otherwise, to secure the first-mortgage bonds to be issued by them to the amount of twenty thousand dollars per mile of single track, including every mile of main track, and also at the rate of twenty thou-

sand dollars per mile of side, transfer, and extension track-, which this company may undertake to build between the city of St.
250 Louis, Missouri, and Keokuk, in the State of Iowa, and also to secure all bonds to be issued on any branches or extensions from said main track, which said mortgage and bonds may be in such form and upon such terms and conditions as our said president and treasurer may determine; said bonds to draw interest at the rate of seven per cent. per annum, payable semi-annually in gold, free of Government tax, or eight per cent. per annum, payable semi-annually in currency, to mature not less than thirty nor more than fifty years from the date thereof; and our said president and treasurer are authorized to make the principal and interest coupons of said bonds payable in the city of New York or at such other place as they may think best, and they are hereby authorized to negotiate and dispose of said bonds as they may think best to secure the early completion of this company's railroad.

Moved by W. W. Walker and seconded by J. W. Barrett and was unanimously adopted:

Resolution Authorizing Making of a Contract with the Mo. & Iowa R'y Const. Co. for Completion of Road.

Resolved, That the president of this company be, and is hereby, authorized to enter into contract with the Missouri and Iowa
251 Railway Construction Company or with any other company or firm for the completion of any part or portions of this company's line, and for furnishing the materials therefor, paying for the same in the stock and bonds or any other assets of the company.

Moved by W. W. Walker and seconded by Geo. Douglas that *be* following be appointed as a committee to draw up by-laws for this corporation and report the same at next meeting of the board: George Greene, S. R. Woolfolk, and S. P. Wisner; and, on motion, the same was adopted.

Moved by W. W. Walker and seconded by George Douglas, and, on motion, was unanimously adopted, to wit:

Resolved, That the executive committee, or a majority of the same, be, and is hereby, authorized to take any action and do all things necessary to promote or advance the interests of the company in the intervals between the meetings of the board.

Moved by W. W. Walker and seconded by W. B. Elliott, and, on motion, was unanimously adopted, to wit:

Resolved, That Hon. George Greene, president, and W. W. Walker be, and are hereby, appointed a committee and authorized to
252 negotiate and close any arrangement which they may deem best for this company looking to securing permanently over this company's road the business of the Mississippi Valley and Western railroad and of the Hannibal and St. Joseph railroad.

Annual Meeting of Stockholders of the St. L., H. & K. R. R. Co., March 4, 1873.

Annual meeting.

The annual meeting of the stockholders of the St. Louis, Hannibal and Keokuk Railroad Company met at the Planters' House, Hannibal, Missouri, on March 4, 1873, at 1.30 o'clock p. m., pursuant to call, published in papers in accordance with the laws of the State of Missouri, in words and figures as follows:

St. Louis, Hannibal and Keokuk R. R.

The annual meeting of the stockholders of the St. Louis, Hannibal and Keokuk Railroad Company for the election of directors to serve for the ensuing year will be held at the Planters' House, Hannibal, on Tuesday, March 4th, 1873, between the hours of 12 and 3 o'clock.

253 *Names of Stockholders Present at said Meeting.*

Present: S. R. Woolfolk, D. T. Waddy, Walton Perkins, W. W. Walker, S. P. Wisner, John W. Barrett, J. D. Pitt, W. B. Elliott, S. J. Reynolds, and Wm. Buchanan.

The secretary called the meeting to order and read the notice of publication.

On motion of Wm. Buchanan, S. R. Woolfolk was unanimously chosen as president of the meeting.

The secretary then read the proceedings of the various meetings, and on motion they were unanimously approved, ratified, and confirmed.

The meeting then proceeded to the election of thirteen directors for the ensuing year. The judges of election, on being sworn as required by law, the meeting then proceeded to the election of directors by ballot. The following — the report of the judges of election in words and figures, as follows:

For directors of St. Louis, Hannibal and Keokuk R. R.:

Names of Directors Elected at said Meeting.

George Greene.
George Douglas.
W. W. Walker.
John F. Ely.
John W. Barrett
254 Walton Perkins.
David T. Waddy.
S. R. Woolfolk.
Nathan S. Dimmitt.
Wilson B. Elliott.
Stephen J. Reynolds.
Jas. D. Pitt.
Wm. Buchanan.

We, the undersigned, hereby certify that the names opposite hereto received 1,943 votes, being all the votes cast, for directors of the St. Louis, Hannibal and Keokuk Railroad.

Hannibal, Mo., March 4th, 1873.

Inspectors of election:

(Signed) JAS. M. McCLELLAND.
" S. P. WISNER.
" J. I. WALKER.

1,943 votes.

Stockholders' Meeting.

The stockholders of the St. Louis, Hannibal and Keokuk Railroad Company met at the Planters' House, Hannibal, Missouri, on March 4th, 1873, at 3 o'clock p. m., pursuant to a call published in the papers in words and figures as follows, and in the following-named papers—Daily Journal and St. Louis Dispatch:

"Notice."

"Notice is hereby given that a meeting of the stockholders of the St. Louis, Hannibal and Keokuk Railroad Company will be held at the Planters' House, in the city of Hannibal, on the 4th day of March, 1873, at 3 o'clock in the afternoon, to take into consideration the consolidation with, or the lease or purchase of the St.
255 Louis and Keokuk railroad; and also the same in reference to the Pike County Short Line railroad, and to take such action as may be thought best. Also to confirm and ratify the action of the officers, directors, and executive committee in the premises.

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

Personally appeared before the undersigned (a notary public within and for the county of St. Louis), Geo. C. Hume, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the Daily Journal, printed within the said county and State, the newspaper of which he is one of the publishers, for 22 times, the first insertion being on the 7 day of February and the last insertion on the 4th day of March, 1873, as follows: On the 7th Feb'y, 8th, 10th, 11th, 12th, 13th, 14, 15, 17, 18, 19, 20, 21st, 22d, 24th, 25th, 26th, 27, 28; March 1st, 3rd, and 4th.

(Signed) GEO. C. HUME.

[SEAL.] Sworn to and subscribed before me this 7th day of March, 1873.

(Signed) BENJ. F. GRAY, JR.,
Notary Public, St. Louis Co.

256 STATE OF MISSOURI, }
County of St. Louis, } *ss:*

Personally appeared before the undersigned (a notary public within and for the county of St. Louis), Wm. H. Barclay, who, being duly sworn, deposeth and saith that the annexed advertisement was published in the "St. Louis Dispatch," printed within the said county and State, the newspaper of which he is one of the publishers, for two times daily and three times weekly edition, the first insertion being on the 7th day of February, 1873, and the last insertion on the 27th day of February, 1873, as follows: Feb'y 7th & 8th, & 13, & 20, & 27.

(Signed) WM. H. BARCLAY.

Sworn to and subscribed before me this 7th day of March, 1873.
(Signed) JOHN M. McGUFFIN, *N. P.*

The following stockholders were present: S. R. Woolfolk, D. T. Waddy, Walton Perkins, S. J. Reynolds, J. D. Pitt, W. B. Elliott, W. W. Walker, S. P. Wisner, Jno. W. Barrett, and Wm. Buchanan.

On motion, S. R. Woolfolk was appointed pres't of the meeting.

On motion, Wm. Buchanan was appointed secretary of the meeting.

S. P. Wisner read the agreements for which the meeting was called to consider.

On motion, the meeting adjourned to 8 o'clock p. m.

257 PLANTERS' HOUSE, HANNIBAL, *March* 4, 1873.

The stockholders met at eight o'clock p. m. pursuant to adjournment, the same stockholders present as were in the afternoon and N. S. Dimmitt, S. R. Woolfolk acting as president.

On motion of J. W. Barrett and seconded by W. B. Elliott, the following resolution was adopted by a call of the stockholders, on which the following stockholders voted aye: W. W. Walker, Walton Perkins, S. R. Woolfolk, W. B. Elliott, J. D. Pitt, Jno. W. Barrett, David T. Waddy, Nathan S. Dimmitt, Stephen J. Reynolds, Wm. Buchanan, and the Missouri and Iron Railway Construction Company, by its president, W. W. Walker.

Resolution of Stockholders Approving the Purchase of the Property of the St. L. and K. R. R. Co.

Resolved, That the deed of sale now here submitted to this meeting, dated March 4th, A. D. 1873, by which the St. Louis and Keokuk Railroad Company conveys all its corporate property of every name and kind to the St. Louis, Hannibal and Keokuk Railroad Company, and the conditions and covenants contained therein, is hereby approved and confirmed, and the president and secretary of this company are hereby authorized and empowered to ac-
258 cept the same and ratify and confirm the covenants and conditions therein, for and in behalf of this company, at their discretion, by signing their respective names and affixing the corporate seal of this company thereto.

Certificate of the President and Secretary that a Majority of the Stockholders of the St. L., H. & K. R. R. Co. Assented to the Purchase of the Pike County Short Line.

We, the undersigned, George Greene, president, and Wm. Buchanan, secretary of the St. Louis, Hannibal and Keokuk Railroad Company, hereby certify that the holders of a majority of the stock of the St. Louis, Hannibal and Keokuk Railroad Company have assented in writing to the purchase of the Pike County Short Line railroad, together with all its rights, franchises, and effects, by the

St. Louis, Hannibal and Keokuk Railroad Company, upon terms agreed upon between said companies respectively.

259 Dated the 4th day of March, A. D. 1873.

(Signed) GEORGE GREENE,
President of the St. Louis, Hannibal and Keokuk Railroad Company.

[SEAL.] (Signed) WM. BUCHANAN,
Secretary of the St. Louis, Hannibal and Keokuk Railroad Company.

Certificate of President and Secretary of P. C. S. L. R. R. Co. that a Majority of Stockholders Assented to Transfer of its Road.

We, the undersigned, A. P. Miller, president, and P. P. Parker, secretary of the Pike County Short Line Railroad Company, hereby certify that the holders of a majority of the stock of the Pike County Short Line Railroad Company have assented in writing to the sale and transfer of the said Pike County Short Line railroad, together with all its rights, franchises, assets, and effects, to the St. Louis, Hannibal and Keokuk Railroad Company, upon terms agreed upon between said companies respectively.

Dated the 4th day of March, A. D. 1873.

(Signed) A. P. MILLER,
President of the Pike County Short Line Railroad Company.

[SEAL.] (Signed) P. P. PARKER,
Secretary of the Pike County Short Line Railroad Company.

260 *Certificate of Secretary of State to Filing said Transfer in His Office.*

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigel, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the certificate of the president and secretary of the St. Louis, Hannibal and Keokuk Railroad Company and the president and secretary of the Pike County Short Line Railroad Company consenting to the purchase and sale of the St. Louis, Hannibal and Keokuk R. R. Company and the Pike County Short Line Railroad Company.

Filed March 14th, 1873, as appears by comparing the same with the original roll of said certificate now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed my official seal. Done at this office this 14th day of March, A. D. eighteen hundred and seventy-three.

(Signed) EUGENE F. WEIGEL,
Secretary of State.

Recorded on pages 154 and 155, Book Railroad Corporations, volume II.
Filed March 14th, 1873.

(Signed) EUGENE F. WEIGEL,
Secretary of State.

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Eugene F. Weigel, secretary of state of the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the agreement with and conveyance of the Pike County Short Line Railroad Company to the St. Louis, Hannibal and Keokuk Railroad Company.

Filed March 15th, 1873, as appears by comparing the same with the original of said agreement, now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal. Done at office this 18th day of March, A. D. eighteen hundred and seventy-three.

(Signed) EUGENE F. WEIGEL,
Secretary of State.

Recorded on pages 156 to 162, Book Railroad Corporations, vol. 2.
Filed March 15th, 1873.

(Signed) EUGENE F. WEIGEL,
Secretary of State.

Deed of Transfer of the P. C. S. L. R. R. Co. to St. L., H. & K. R. R. Co.

This indenture, made this fourth day of March, A. D. 1873, between the Pike County Short Line Railroad Company, a corporation created under and by virtue of the laws of the State of Missouri, party of the first part, and the St. Louis, Hannibal and Keokuk Railroad Company, also a corporation duly created and organized under and by virtue of the laws of the State of Missouri, party of the second part, witnesseth:

Whereas the party of the first part is the owner of a railroad situated in the county of Pike and State of Missouri, now partly
264 finished and in process of construction, known as the Pike County Short Line railroad; and whereas the said party of the first part has not sufficient means to finish the building of their said railroad and desire its speedy completion; and whereas the party of the second part desire to purchase said railroad and complete and operate the same as part and parcel of their said railroad now in process of construction; and whereas by an act of the General Assembly of the State of Missouri entitled "An act to amend chapter sixty-three (63) of the General Statutes, railroad corporations, so as to authorize the consolidation, leasing, and extentions of rail-

roads," approved March 24th, 1870, it was, among other things, provided that any railroad organized in pursuance of the laws of the State of Missouri or of any other State or of the United States might lease or purchase all or any part of a railroad, with all its privileges, rights, franchises, real estate and other property, the whole or a part of which was in the State of Missouri, and constructed, owned, or leased by any other company if the lines
265 of the road or roads of said companies were continuous or connected at a point either within or without the State of Missouri on such terms as might be agreed upon between said companies respectively; and whereas the respective railroads of the said parties of the first and second part are continuous and connected at a point within the State of Missiouri; and whereas the party of the second part is desirous as aforesaid of purchasing the said Pike County Short Line railroad with all its privileges, rights, franchises, real estate, and other property upon the terms which have been agreed upon between said parties of the first and second part- respectively, and which are hereinafter more fully set forth.

And whereas the holders and owners of a majority of all the stock of each of the said parties respectively have assented in writing to the said purchase, being the same which is witnessed by this indenture and certificates thereof, signed by the presidents and secretaries respectively of said parties of the first part and second
266 parts, have been duly filed in the office of the secretary of state of said State of Missouri.

And whereas the said party of the second part has agreed to assume all the contracts, debts, liabilities, and obligations, except as are hereinafter specified and excepted, heretofore made or incurred by or imposed upon said party of the first part, and to stand in its place and stead with reference thereto, and to all suits at law or in equity pending against said party of the first part, except as is hereinafter specified and excepted:

Now, therefore, this indenture witnesseth that the party of the first part, in consideration of the payments, undertakings, and agreements hereinafter mentioned and contained on the part of the said party of the second part, its successors and assigns, to be had, kept, and performed, and by and with the consent, request, and direction of the holders and owners of a majority of the stock of said party of the first part for this purpose first had and obtained in writing, has bargained, granted, and sold, and by these presents does grant, bargain, sell, and convey unto the said party of the
267 second part, its successors and assigns, the entire railroad of the party of the first part, extending from the north line of the county of Pike and running through Frankfort and Bowling Green and near Prairieville to the south line of said county of Pike, in the State of Missouri, being in length, when completed, about thirty miles; and also all the lands, road-bed, embankments, turnouts, hereditaments, appurtenances, buildings, fixtures, and machinery appurtenant and belonging to or connected with the said railroad or in any manner used or to be used or employed in operating the same, and all rails, ties, fencing, and erections of every

kind belonging to, upon, or connected with said railroad; and also all and every right of way, license, easement, right, privilege, and immunity of the party of the first part conferred by and possessed and enjoined under and by virtue of its charter or articles of incorporation and of any and every act authorizing the same and all acts amendatory thereof, or otherwise however obtained or enjoyed, with full right and authority to have, hold, and use the same, with
268 rights of way, easements, rights, privileges, and immunities as fully as the party of the first part might or could if these presents had not been executed; to have and to hold all and singular the above-granted railroad, premises, property, estate, and effects, including the right of way, easements, licenses, privileges, and immunities aforesaid, unto the said party of the second part, the St. Louis, Hannibal and Keokuk Railroad Company, its successors and assigns forever.

And it is further covenanted and agreed by the party of the first part that all bonds, notes, bills, moneys, subscriptions, choses in action, accounts, claims, and demands, and assets and effects of every kind and nature whatsoever of, belonging, or owing to the party of the first part shall be, and the same are hereby, assigned, transferred, and set over to the party of the second part, and that full power and authority is hereby vested in said party of the second part to enforce collection of the same, and to appropriate the proceeds thereof to its own use and benefit: Provided, however, and it is hereby ex-
269 pressly agreed, that nothing herein contained shall be deemed or in any manner taken to effect the right of corporate existence of the said party of the first part, or to effect any powers or franchises the exercise of which may from time to time become necessary to protect the interest of the parties of the second part hereto according to the true intent and meaning of this instrument.

And the said party of the second part, in consideration of the above grant and of the covenants and agreements herein contained and to be performed, fulfilled, and kept on the part of the party of the first part, its successors, and assigns, covenants and agrees that it does hereby assume and will fully pay, satisfy, and discharge all the lawful debts, liabilities, and obligations heretofore made or incurred by or imposed upon the said party of the first part previous to the 26th day of March, 1872, and will stand in its place and stead with reference thereto, and to all suits at law or in equity now pending against said party of the first part.

And the said party of the second part, for itself, its succes-
270 sors, and assigns, hereby further covenant- and agree- that it does hereby, in the place and stead of the party of the first part, assume the contract entered into on the fifth day of June, 1872, by and between the party of the first part and the Missouri and Iowa Railway Construction Company, and will do and perform in all respects all the contracts, agreements, and undertakings of the party of the first part touching the same, including the issuing of their stock in place of said Short Line stock, and will accept all things lawfully done on the part of the said Missouri and Iowa Railway Construction Company under or by virtue of said last-mentioned contract

as fully and in all respects as the same might or ought to be done, performed, or accepted by the said party of the first part; and the said party of the second part, for itself, its successors, and assigns, does hereby further covenant and agree that for all valid and lawful full- paid stock of the party of the first part lawfully
271 issued in pursuance of its charter, by-laws, and regulations, and in the hands of *bona fide* holders, and issued previous to the twenty-sixth day of March, 1872, the party of the second part will issue a like amount of stock in its own corporation; and upon the surrender and transfer by the stockholders of the party of the first part to the party of the second part of their respective stock certificates or other evidences of ownership of such stock the party of the second part will deliver to such stockholders, respectively, a certificate or certificates of corresponding amounts of stock in the company of the party of the second part—that is to say, for each and every share of stock in the company of the party of the first part so surrendered or transferred to them the said party of the second part will issue and deliver to the person or persons or township or corporation so surrendering or transferring one share of stock in its own corporation, and for all unpaid subscriptions when fully
272 paid up it will issue its stock; and the said party of the second part, for itself, its successors, and assigns, does hereby further covenant and agree that it will, at its own cost, risk, and expense, construct and complete so much of said Pike County Short Line railroad as is yet unfinished for and as a part of their own line, and will keep said railroad in good working condition and repair as a first-class railroad, and so as to be suitable for the transaction of all the business that can reasonably be done thereon, and will perform all and every duty and obligation toward the public which the party of the first part would be legally bound to do and perform under its articles of incorporation or association and the laws of the State of Missouri if these presents had not been executed; and the party of the first part hereby covenants and agrees that it will at all times, when thereunto reasonably required by the party of the second part, do and perform, at the expense of the party of the second part, all such reasonable acts, matters, and
273 things as may be proper for the due protection, preservation, and enjoyment of the property hereby conveyed or intended to be conveyed, and to carry into effect the true intent and meaning of this instrument, and in default thereof the same may be done by, but at the expense of the party of the second part, and therein the party of the second part may use the name, power, and authority of the party of the first part; and, further, that the party of the second part may at any time and in all places, at its own expense, use the corporate name of the party of the first part in any suits or proceedings wherein it shall be necessary or proper for the enforcement of its rights against third parties.

It is further understood, covenanted, and agreed between the parties hereto that the party of the second part shall have the right, and is hereby vested with full power and authority, to mortgage the property herein conveyed the same as any other part or por-

274 tion of their line of road, and the same as the party of the first part could have done if these presents had not not been executed.

It is further hereby covenanted and agreed between the parties hereto that the party of the second part may from time to time, at its own expense, make such alterations, improvements, and additions in, upon, or to the property hereby conveyed as may be proper for its full enjoyment for railroad purposes; and in case said party of the second part, for the more advantageous use of said property, shall at any time desire to acquire, obtain, or enjoy any additional lands, rights of way, or other property, the said party of the second part may acquire the same in its own name or in the name of the party of the first part, but at the expense of the said party of the second part.

[SEAL.] (Signed) A. P. MILLER,
President Pike County Short Line Railroad Company.
(Signed) P. P. PARKER,
Secretary Pike County Short Line Railroad Company.
[SEAL.] (Signed) GEO. GREENE,
President St. Louis, Hannibal and Keokuk Railroad Company.
(Signed) WM. BUCHANAN,
Secretary St. Louis, Hannibal and Keokuk Railroad Company.

We, the undersigned, stockholders in the Pike County Short Line Railroad Company of Missouri, holders and owners of the number of shares of stock set opposite our respective names, do here-
275 by give our written assent to the sale of the Pike County Short Line railroad, with all its franchises, rights, and effects, to the St. Louis, Hannibal and Keokuk Railroad Company, as provided and set forth in the foregoing indenture or deed of sale, and we hereby authorize, empower, and direct the president and secretary to execute the same by signing their respective names and affixing the corporate seal thereto, and deliver the same to said St. Louis, Hannibal and Keokuk railroad.

Dated this fourth day of March, A. D. 1873.

Names of stockholders.	No. of shares.
Cuivre township, Pike Co., Mo., by D. L. Caldwell, commissioner.	Seven hundred and fifty shares (750).
Peno township, in Pike Co., Mo., by L. J. Durkun, commissioner.	Four hundred shares (400).
A. P. Miller	Five (5).
M. R. K. Biggs	Two (2).
Wm. M. Bayse	Four (4).
S. J. Reynolds	Twenty (20).
Jo. McCune	Two (2).
P. P. Parker	Two (2).
D. L. Caldwell	One (1).
James Monaghan	Ten (10).
The Missouri and Iowa Railway Construction Co., by W. W. Walker, president.	Twelve hundred and sixty shares (1260).

276 We, the undersigned, stockholders in the St. Louis, Hannibal and Keokuk Railroad Company, holders and owners of the number of shares of stock set opposite our respective names, do hereby give our written assent to the purchase of the Pike County Short Line railroad, with all its franchises, rights, and effects, by the St. Louis, Hannibal and Keokuk Railroad Company, as provided and set forth in the foregoing indenture or deed of sale, and authorize the president and secretary of this company to accept of said deed and assent to the conditions contained therein by signing their respective names and affixing the corporate seal to the same.

Dated the fourth day of March, 1873.

Names of stockholders.	No. of shares.
The Missouri and Iowa Railway Construction Co., by W. W. Walker, president.	Eighteen hundred and sixty shares (1860).
W. W. Walker	Ten (10).
S. R. Woolfolk	Ten (10).
Walton Perkins	Ten (10).
D. T. Waddy	Ten (10).
S. J. Reynolds	Ten (10).
J. D. Pitt	One (1).
Nathan S. Dimmitt	Ten (10).
W. B. Elliott	One (1).
277 J. W. Barrett	Ten (10).
S. P. Wisner	One (1).
Wm. Buchanan	Ten (10).

We, the undersigned, A. P. Miller, president, and P. P. Parker, secretary, of the Pike County Short Line Railroad Company, hereby certify that the holders and owners of a majority of the stock of such company have assented in writing to the sale and transfer of the Pike County Short Line railroad, together with all its rights, franchises, assets, and effects, to the St. Louis, Hannibal and Keokuk Railroad Company upon the terms and conditions set forth in the foregoing deed of conveyance.

Dated ——, 1873.

(Signed) A. P. MILLER,
President of the Pike Co. Short Line Railroad Co.

(Signed) P. P. PARKER,
Secretary of the Pike Co. Short Line Railroad Co.

We, the undersigned, George Greene, president, and Wm. Buchanan, secretary, of the St. Louis, Hannibal and Keokuk Railroad Company, hereby certify that the holders and owners of a
278 majority of the stock of such company have assented in writing to the purchase of the Pike County Short Line railroad, together with all its rights, franchises, assets, and effects, by the St. Louis, Hannibal and Keokuk Railroad Company according to

the terms and conditions set forth in the foregoing deed of conveyance.

(Signed) GEORGE GREENE,
President of the St. Louis, Hannibal and Keokuk Railroad Company.

(Signed) WM. BUCHANAN,
Secretary of the St. Louis, Hannibal and Keokuk Railroad Company.

Directors Ratify Proceedings of Stockholders' and Director's Meetings.

PLANTERS' HOUSE, ST. LOUIS, *May* 5, 1873.

The board met pursuant to adjournment of the forenoon, the same directors present, and was called to order by the vice-president, S. R. Woolfolk, at 5 o'clock p. m.

The secretary read the proceedings of the stockholders' and directors' meetings held on and since March 4, 1873. They were, on motion, unanimously approved, ratified, and confirmed.

The meeting proceeded to the election of officers for the ensuing year.

Names of Officers Elected.

The vice-president appointed Dr. S. J. Reynolds and Dr. D. T. Waddy as tellers. On motion, Hon. Geo. Greene was nominated as president. Whole number of votes cast for pres't —. Hon. Geo. C. Greene received —, and was elected.

279 On motion, S. R. Woolfolk was proposed as vice-president. Whole number of votes cast for vice-president, —. S. R. Woolfolk received —, and was elected.

On motion, S. P. Wisner was nominated for treasurer. Whole number of votes cast for treasurer, —. S. P. Wisner received —, and was elected.

On motion, Wm. Buchanan was nominated for secretary. Whole number of votes cast for secretary, —. Wm. Buchanan received —, and was elected.

On motion of J. W. Barrett, the vice-president appointed W. W. Walker as a member of the executive committee.

W. W. Walker, pres't of the Missouri and Iowa Railway Construction Company, laid before the meeting the following letter:

Letter of W. W. Walker, President Mo. & Iowa R'y Const. Co., Asking Extension of Time.

HANNIBAL, MO., *March* 10*th*, 1873.

To the directors of the St. L., H. & K. R. R. Co.

GENTLEMEN: In consequence of the very unusual stringency in the money market for the past seven months and the impos-
280 sibility of selling R. R. bonds, together with the high price of R. R. iron, your road has not yet been completed, and only

little more than a month of the time allowed by the contract now remains.

Under the circumstances, I am obliged to ask in behalf of this company an extension of the time for the completion of the road until Dec. 31st, 1873.

Very respectfully,
(Signed) W. W. WALKER,
Pres't M. & I. R'y C. Co.

On motion of N. S. Dimmitt, seconded by Geo. Douglass, the following preamble and resolution *was* unanimously adopted, to wit:

Resolution Granting Extension of Time for Completion of Railroad.

Whereas this company have assumed the contract of the Pike County Short Line Railroad Company made with the Missouri and Iowa Railway Construction Company for the building of said Pike County Short Line railroad; and whereas the president of said construction company has addressed a letter to this board asking for additional time for the completion of said road under said contract: Now, therefore,

Resolved, That the time for the completion of said railroad
281 under said contract be, and the same is hereby, extended to the 31st day of December, 1873, and that the secretary of this company endorse said extension on said contract.

Election of Directors March 2, 1875.

STATE OF MISSOURI, *County of Marion:*

HANNIBAL, MO., *March* 2, 1875.

We do solemnly swear that we will execute the duties of inspectors of the election now to be held with strict impartiality and according to the best — our ability.

(Signed) G. W. HORTON.
" WM. SKEA.
" JAMES BUCHANAN.

Sworn to and subscribed before me this 2d day of March, A. D. 1875, at the city of Hannibal, Marion Co., Mo.

(Signed) JOHN L. LACY,
Justice of the Peace.

The meeting then proceeded to the election of thirteen directors. The polls were opened at two o'clock p. m. and were kept open to the close of the election. After carefully counting the votes polled the judges of election returned the following as the result of the election, viz:

For directors of the St. Louis, Hannibal and Keokuk Railroad Company:

13—188

282 *Names of Directors Elected March 2d, 1875.*

Geo. Greene.
W. W. Walker.
S. P. Wisner.
John F. Ely.
Jno. W. Barrett.
Walton Perkins.
David T. Waddy.
S. R. Woolfolk.
N. S. Dimmitt.
Wilson B. Elliott.
Stephen J. Reynolds.
J. D. Pitt.
Wm. Buchanan.

We, the undersigned, hereby certify that the names opposite hereto received 1,921 votes, being all the votes cast, for directors of the St. Louis, Hannibal and Keokuk R. R. Co.

(Signed) G. W. HORTON,
" WM. SKEA,
" JAMES BUCHANAN,
Inspectors.

On motion of S. P. Wisner, the meeting proceeded to the election of thirteen directors. The polls were opened at 2 o'clock p. m. and were kept open to the close of the election, and, after carefully counting the votes polled, the judges or inspectors of election returned the following as the result of the election, viz:

We, the undersigned, inspectors of election, do hereby declare and certify the following-named persons to be duly elected to the office of directors for the St. Louis, Hannibal and Keokuk Railroad Company for the year 1876, the same being elected by 1,669 votes,
383 this being the entire number of votes cast:

Geo. Greene.
W. W. Walker.
S. P. Wisner.
John F. Ely.
John W. Barrett.
Walton Perkins.
David T. Waddy.
S. R. Woolfolk.
N. S. Dimmitt.
Wilson B. Elliott.
Stephen J. Reynolds.
J. D. Pitt.
Wm. Buchanan.

Election of Directors June 6th, 1877.

The polls were opened and kept open to the close of the election, and, after carefully counting the votes polled, the judges or inspectors of election returned the following as the result of the election, viz:

We, the undersigned, judges of an election held at the office of the company, Hannibal, Mo., this sixth day of June, 1877, by the stockholders in the St. Louis, Hannibal and Keokuk Railroad Company for the purpose of electing thirteen directors for said company, do

hereby certify that the following-named persons were voted
284 for at said election, and that they received each the number of votes set opposite their respective names for directors of said company, to wit:

Names of Directors Elected June 6th, 1877.

George Greene	received	1,280	votes.
W. W. Walker	"	"	"
Jno. F. Ely	"	"	"
S. P. Wisner	"	"	"
S. R. Woolfolk	"	"	"
Walton Perkins	"	"	"
S. J. Reynolds	"	"	"
N. S. Dimmitt	"	"	"
W. B. Elliott	"	"	"
L. P. Jackson	"	"	"
J. S. Bockel	"	"	"
Jos. McCune	"	"	"
F. C. Cake	"	"	"

And we do here further certify and declare that Geo. Greene, W. W. Walker, Jno. F. Ely, S. P. Wisner, S. R. Woolfolk, Walton Perkins, S. J. Reynolds, N. S. Dimmitt, W. B. Elliott, L. P. Jackson, J. S. Bockel, Jos. McCune, and F. C. Cake, having each received a majority of all the votes cast at said election, are duly elected directors for said St. Louis, Hannibal and Keokuk Railroad Company.

Witness our hands this sixth day of June, A. D. 1877.

R. H. NORTON,
G. W. HORTON,
JO. McCUNE,
Judges of Election.

285 *Election of Directors May 6th, 1878.*

The polls were opened and kept open to the close of the election, and, after carefully counting the votes polled, the inspectors of election returned the following as the result of the election, viz:

We, the undersigned, judges of an election held at the office of the company, in Hannibal, Missouri, this sixth day of May, 1878, by the stockholders of the St. Louis, Hannibal and Keokuk Railroad Company for the purpose of electing thirteen directors for said company, do hereby certify that the following-named persons were voted for at said election, and that they received each the number of votes set opposite their respective names for directors of said company, to wit:

Names of Directors Elected May 6th, 1878.

George Greene	received	1,118	votes.
W. W. Walker	"	1,118	"
Jno. F. Ely	"	1,118	"
S. P. Wisner	"	1,118	"
S. R. Woolfolk	"	1,118	"
Walton Perkins	"	1,118	"
S. J. Reynolds	"	1,118	"
N. S. Dimmitt	"	1,118	"
W. B. Elliott	"	1,118	"
L. P. Jackson	"	1,118	"
Geo. Douglas	"	1,118	"
Jo. McCune	"	1,118	"
286 F. C. Cake	"	1,118	"

And we do hereby further certify and declare that George Greene, W. W. Walker, Jno. F. Ely, S. P. Wisner, S. R. Woolfolk, Walton Perkins, S. J. Reynolds, N. S. Dimmitt, W. B. Elliott, L. P. Jackson, Geo. Douglas, Jo. McCune, and F. C. Cake, having each received a majority of all the votes cast at said election, are duly elected directors for said St. Louis, Hannibal and Keokuk Railroad Company.

Witness our hands this sixth day of May, A. D. 1878.

GEO. B. ARCHER,
OLIVER SMITH,
GEO. H. GREENE,
Judges of Election.

The chairman declared the above-named persons duly elected.

On motion, the meeting adjourned.

(Signed) L. P. JACKSON, *Sec'y.*

HANNIBAL, *May 6th*—11.30 a. m.

The newly elected board of directors met.

Present: Geo. Greene, W. W. Walker, Jno. F. Ely, S. P. Wisner, S. R. Woolfolk, S. J. Reynolds, N. S. Dimmitt, W. B. Elliott, L. P. Jackson, and Jo. McCune.

On motion, Geo. Greene was elected chairman and L. P. Jackson secretary of the meeting.

287 On motion of George Greene, the meeting went into the election of officers, with the following result:

Election of Officers May 6th, 1878.

S. P. Weiner was elected president; George Greene, vice-pres't and general manager; Jno. F. Ely, treasurer, and L. P. Jackson, secretary.

On motion, John F. Ely was elected a member of the executive committee.

Election of Directors March 4th, 1879.

On motion, the following-named persons were chosen to act as inspectors of election, viz:

A. K. Wilson, Geo. H. Greene, and N. B. Consigny.

On motion, the meeting went into the election of thirteen directors for the ensuing year. The following-named persons were put in nomination and elected:

Names of Directors Elected.

Geo. Greene, W. W. Walker, J. F. Ely, S. P. Wisner, W. B. Elliott, N. S. Dimmitt, S. J. Reynolds, Jo. McCune, S. R. Woolfolk, Geo. Douglas, E. M. Greene, Walton Perkins, and F. C. Cake.

Directors' Meeting, 1879.

The newly elected board of directors met.

Present: Geo. Greene, W. W. Walker, Jno. F. Ely, Geo. Douglas, S. P. Wisner, W. B. Elliott, E. M. Greene, N. S. Dimmitt, and Jo. McCune.

288 On motion, Jno. F. Ely was elected chairman and N. B. Consigny secretary of the meeting.

On motion of Geo. Greene, the meeting went into the election of officers, with the following result:

Names of Officers Elected for 1879.

S. P. Wisner was elected president.

Geo. Greene was elected vice-president and general manager.

John F. Ely was elected treasurer.

W. W. Walker was elected chief engineer.

Geo. Douglas was elected purchasing agent.

Wm. Buchanan was elected secretary.

N. B. Consigny was elected assistant secretary.

On motion, Jno. F. Ely was elected a member of the executive committee.

On motion, the former mortgage which the stockholders authorized to be entered on the records is hereby approved and adopted, and the president, secretary, and treasurer are hereby authorized to execute the same.

289 *Election of Directors April* 7, 1880.

The polls were open and kept open to the close of the election, and, after carefully counting the votes polled, the inspectors of election returned the following as the result of the election, viz:

We, the undersigned, judges of an election held at the office of the Co., in Hannibal, Mo., this 7th day of April, 1880, by the stockholders of the St. L., H. & K. R. R. Co. for the purpose of electing 13 directors

for said Co., do hereby certify that the following-named persons were voted for at said election, and that they received each the number of votes set opposite their respective names for directors of said company, to wit:

Names of Directors Elected April 7, 1880.

W. W. Walker	2,801	votes.
John F. Ely	2,801	"
S. P. Wisner	2,801	"
290 S. R. Woolfolk	2,801	"
Walton Perkins	2,801	"
S. J. Reynolds	2,801	"
N. S. Dimmitt	2,801	"
W. B. Elliott	2,801	"
Geo. Douglas	2,801	"
Jo. McCune	2,801	"
E. M. Greene	2,801	"
F. C. Cake	2,801	"
Wm. Greene	2,801	"

We do hereby further certify and declare that the above-named persons, having each received a majority of all the votes cast at said election, are duly elected directors for said St. L., H. & K. R. R. Co.

Witness our hands this 7th day of April, A. D. 1880.

(Signed) OLIVER SMITH,
T. H. GREENE,
GEO. H. GREENE,
Judges of Election.

Election of Directors March 16, 1881.

The polls opened and kept open to the close of the election, and, after carefully counting the votes polled, the inspectors of election returned the following as the result of the election, viz:

We, the undersigned, judges of an election held at the office of the company, in Hannibal, Mo., this 16th day of March, 1881, by the stockholders of the St. Louis, Hannibal and Keokuk Railroad
291 Co. for the purpose of electing 13 directors for said Co., do hereby certify that the following-named porsons were voted for at said election, and that they received each the number of votes set opposite their respective names for directors of said Co., to wit:

Names of Directors Elected March 16, 1881.

W. W. Walker	3,737	votes.
John F. Ely	3,737	"
S. F. Wisner	3,737	"
S. R. Woolfolk	3,737	"
Walton Perkins	3,737	"
S. J. Reynolds	3,737	"

N. S. Dimmitt	3,737 votes.
W. B. Elliott	3,737 "
George Douglas	3,737 "
Jo. McCune	3,737 "
E. M. Greene	3,737 "
F. C. Cake	3,737 "
Wm. Greene	3,737 "

We do further certify and declare that the above-named persons having each received a majority of all the votes cast at said election are duly elected directors for said St. Louis, Hannibal and Keokuk Railroad Company.

Witness our hands this 16th day of March, 1881.

(Signed) L. P. JACKSON.
OLIVER SMITH.

Election of Directors April 6, 1882.

The polls opened and kept open to the close of the election,
292 and after carefully counting the votes polled the inspectors of election returned the following as the result of the election held; viz:

We, the undersigned judges of an election held at the office of the company, in Hannibal, Mo., this 6th day of April, 1882, by the stockholders of the St. Louis, Hannibal and Keokuk Railroad Company for the purpose of electing 13 directors for said Co. do hereby certify that the following-named persons were voted for at said election and that they received each the number of votes set opposite their respective names:

Names of Directors Elected April 6, 1882.

W. W. Walker	3,768 votes.
Jno. F. Ely	3,768 "
S. P. Wisner	3,768 "
S. R. Woolfolk	3,768 "
Walton Perkins	3,768 "
S. J. Reynolds	3,768 "
N. S. Dimmitt	3,768 "
W. B. Elliott	3,768 "
Geo. Douglas	3,768 "
Jo. McCune	3,768 "
Wm. Greene	3,768 "
F. C. Cake	3,768 "
Wm. Buchanan	3,768 "

We do further certify and declare that the above-named
293 persons, having each received a majority of all the votes cast at said election, are duly elected directors for said St. Louis Hannibal and Keokuk Railroad Company.

Witness our hands this sixth day of April, 1882.

(Signed) OLIVER SMITH.
GEO. H. GREENE.

Election of Directors March 6, 1883.

The polls opened and kept open to the close of the election, and after carefully counting the votes polled the inspectors of election returned the following as the result of the election, viz:

We, the undersigned, judges of an election held at the office of the company, in Hannibal, Mo., this 6th day of March, 1883, by the stockholders of the St. Louis, Hannibal and Keokuk Railroad Co., for the purpose of electing 13 directors for said company, do hereby certify that the following-named persons were voted for at said election and that they received each the number of votes set opposite their respective names.

Names of Directors Elected March 6, 1883.

W. W. Walker	3,528	votes.
Jno. F. Ely	3,528	"
George Douglas	3,528	"
Wm. Greene	3,528	"
S. R. Woolfolk	3,528	"
Walton Perkins	3,528	"
294 D. C. Blair	3,528	votes.
S. J. Reynolds	3,528	"
N. S. Dimmitt	3,528	"
W. B. Elliott	3,528	"
Jo. McCune	3,528	"
Chas. E. Vail	3,528	"
Wm. Buchanan	3,528	"

We do further certify and declare that the above-named persons, having each received a majority of all the votes cast at said election, are duly elected directors for said St. Louis, Hannibal and Keokuk R. R. Co.

Witness our hands this 6th day of March, 1883.

(Signed) F. C. CAKE, SR.
" GEO. H. GREENE.

Resolution Ratifying Contract with John I. Blair and Moses Taylor.

W. W. Walker offered the following resolution, which was adopted, viz:

Resolved, That the contract for the completion of this company's road, executed with John I. Blair and Moses Taylor February 24th, 1881 (of which the following is a copy), be, and the same is hereby, ratified and confirmed by the stockholders of this company.

Contract with Jonn I. Blair and Moses Taylor to Complete Road, Feb. 24th, 1881.

This agreement, made this 24th day of February, one thousand eight hundred and eighty-one, between John I. Blair, of Blairstown,

New Jersey, and Moses Taylor, of New York city, parties of the first part, and the St. Louis, Hannibal and Keokuk Railroad
295 Company, a corporation duly organized under the laws of the State of Missouri, party of the second part, witnesseth:

Whereas the party of the second part has the right to construct and has determined to construct a railroad from the south line of Pike county, in the State of Missouri, to some point on the Wabash, Saint Louis and Pacific railroad, at the town of Wentzville or the town of Peruque or to some point between said towns, which railroad will be about thirty-eight (38) miles long and some two miles or more of siding; which railroad will be an extension of the present line of railroad now owned and operated by said party of the second part; and

Whereas the said party of the second part has contracted with the parties of the first part for the construction and completion of the said railroad so determined by it to be constructed, and the parties hereto have entered into this agreement for said purpose:

Now, therefore, the parties hereto, for and in consideration of the premises, and of the covenants hereinafter contained, and the
296 sum of one dollar, paid by the parties of the first part to the party of the second part, the receipt whereof is hereby acknowledged, do covenant and agree to and with each other as follows:

First. The party of the second part covenants, promises, and agrees to and with the parties of the first part that the party of the second part will pay for, furnish, and secure the right of way, free from all liens and incumbrances, except the mortgage hereinafter described, for the portion of the railroad to be constructed under this contract in Lincoln county.

Second. And the said party of the second part further covenants, undertakes, and agrees to and with the parties of the first part that the party of the second part will duly execute and cause to be duly executed and placed in the hands of De Witt C. Blair, ready for delivery to the parties of the first part, four hundred and fifty-six thousand dollars ($456,000) of the first-mortgage bonds of the party of of the second part, which said bonds are to be issued and se-
297 cured pursuant to the indenture of mortgage made by the party of the second part to De Witt C. Blair, and bearing date the first day of August, one thousand eight hundred and seventy-four, and now in force as a lien upon the property and franchises of the party of the second part, and will duly execute or cause to be duly executed, ready for delivery and placed in the hands of said De Witt C. Blair, eight hundred and fifty thousand dollars ($850,000) par value of the stock of the party of the second part, which bonds and stock shall be paid over and delivered to the parties of the first part by said De Witt C. Blair in payment to them for the construction of the railroad by them under this agreement, as hereinafter provided.

Third. The parties of the first part covenant, promise, and agree upon a performance of the foregoing covenants as conditions precedent by the party of the second part that they, the parties of the

first part, well and substantially and in a good and work-
298 manlike manner will build, construct, and complete the said railroad from the south line of Pike county, in the State of Missouri, to some point on said Wabash, St. Louis and Pacific railroad, at the town of Wentzville or the town of Peruque, or at some point on said railroad between said towns, being about thirty-eight miles of main track and two miles of siding; that they will grade or cause to be graded said railroad, or so much thereof as remains ungraded, and build the bridges on said line and furnish therefor all the materials, including the ties and rails for the track of said railroad and side track, and that they will so construct and complete said railroad that the portion of said railroad so constructed by them shall be equal in construction and material with the portion of the railroad already completed; and they further covenant and agree that the said railroad so to be constructed by them shall be fully completed on or before the thirty-first day of December, one thousand eight hundred and eighty-one.

299 Fourth. And the party of the second part covenants and agrees to and with the parties of the first part to pay and deliver to the parties of the first part as the consideration and price for the construction of said railroad so many and such an amount of the first-mortgage bonds of the party of the second part as will be equal to the sum of twelve thousand dollars, par value, of the said first-mortgage bonds per mile for each and every mile so constructed by them, and also the said eight hundred and fifty thousand dollars ($850,000), par value, of the stock of the party of the second part, and the delivery of the requisite number of said — mortgage bonds, and the said stock shall be in full payment for the construction of said railroad; and the party of the second part covenants and agrees that payments on this contract shall be made as the work progresses, and as fast and so soon as each mile of railroad is completed and accepted by the party of the second part the
300 parties of the first part shall be paid therefor at the rate of twelve thousand dollars, par value, per mile in the said first-mortgage bonds, and shall receive also in payment the proper and rateable proportion of the said eight hundred and fifty thousand dollars ($850,000) of the stock of said party of the second part, and the said De Witt C. Blair is hereby authorized and empowered to make payments to the parties of the first part from the bonds and stock placed in his hands, and to deliver the requisite number and amount of said bonds and shares of said stock upon the certificate of William W. Walker, the engineer of the said party of the second part, that any portion of said railroad is completed in compliance with this agreement.

Fifth. And it is further covenanted and agreed that all the property and ties and iron and materials of every kind furnished by the parties of the first part in the construction of each and every portion of the said railroad and placed on the railroad bed,
301 whether the same be attached to the land or not, shall be and remain the property of the parties of the first part until the railroad so constructed or the portion thereof upon which the said

property and materials are placed shall have been accepted by the party of the second part.

And the parties of the first part further covenant and agree, in the event that the party of the second part shall at any time within six months from and after the acceptance of the railroad so constructed by the parties of the first part under this agreement well and truly pay to the parties of the first part a sum of money equal to the cost of all the materials and labor and to all the outlay and expenditures of every nature, kind, and description which the parties of the first part shall have paid, laid out, and expended in the performance of this contract by them, together with eight per centum interest per annum thereon from the time of the several expenditures by the parties of the first part to the time of payment by the party of the second part, then and in that event the said
302 parties of the first part, in consideration of the said amounts of money and interest so to be paid them by the party of the second part at any time before the expiration of six months from and after the acceptance of the said railroad so constructed, will sell and deliver to the said party of the second part an amount of the first-mortgage bonds and stock at its par value equal to all the said first-mortgage bonds and stock of said party of second part which they, the parties of the first part, shall have received in payment for the construction of said railroad as aforesaid, but it is expressly covenanted and agreed that this right or option to purchase said amount of bonds and stock shall have no validity after the said time fixed, and that it shall have no force or validity before said time fixed for any portion of said stock or bonds less than the whole amount thereof, and the purchase thereof and payment therefor must be at one time and for the whole amount of said bonds and stock.

303 In witness whereof the parties of the first part have hereunto set their hands and seals and the party of the second part has hereunto set is corporate seal and caused these presents to be signed by its president, secretary, and treasurer the day and year first above written.

(Signed) JOHN I. BLAIR. [L. S.]
" MOSES TAYLOR. [L. S.]
ST. LOUIS, HANNIBAL AND KEOKUK RAILROAD COMPANY,
[L. S.] By S. P. WISNER, *President.*
WM. BUCHANAN, *Secretary.*
JNO. F. ELY, *Treasurer.*

And it is further agreed that if the parties of the first part shall sell the bonds or any of them which they may receive under this agreement and the party of the second part shall exercise the right and option to purchase the bonds as provided in this agreement then the parties of the first part shall and may pay the party of the second part ninety per centum of the par value of all the

304 bonds so sold, with interest at the rate of eight per centum per annum, in place of the bonds so sold.

(Signed) JOHN I. BLAIR. [L. S.]
" MOSES TAYLOR. [L. S.]
ST. LOUIS, HANNIBAL AND KEOKUK RAILROAD COMPANY,
[L. S.] By S. P. WISNER, *President.*
WM. BUCHANAN, *Secretary.*
JOHN F. ELY, *Treasurer.*

305 IV. Counsel offers in evidence the contract between the St. Louis and Keokuk R. R. Co. and Missouri and Iowa Railway Construction Company, of date April 12th, 1872; also the contract between the Missouri and Iowa Railway Construction Co. and the St. Louis, Hannibal & Keokuk R. R. Co., of date July 15th, 1872. These are substantially the same, except as to names and dates, and are contained in the record of the case of Josiah Fogg *vs.* The St. Louis, Hannibal & Keokuk R. R. Co. and The St. Louis & Keokuk R. R. Co., and are stipulated to be used in this case as there set forth.

306 Same objection interposed by counsel for trustee.

V. Counsel offers the deed of assignment of the St. Louis & Keokuk R. R. Co. to The St. Louis, Hannibal & Keokuk R. R. Co., of date March 4th, 1873, also contained in same record; same stipulation, same objection. (For said deed see page — *post.*)

VI. Counsel offers in evidence the record of the suit in this court, wherein Josiah Fogg was plaintiff and The St. Louis and Keokuk R. R. Co. and The St. Louis, Hannibal & Keokuk R. R. Co. were defendants, commenced on the 21st day of September, 1880 (for said record see page —); also the record in this court in the case wherein Josiah Fogg was complainant *vs.* The St. Louis, Hannibal & Keokuk R. R. Co. and The St. Louis & Keokuk R. R. Co. No. 2191, in equity, bill filed May 3rd, 1883. (For said record see page —.)

Counsel for trustee objects to the introduction of such records of said suits for the reason that neither the master nor the bondholder in this case were parties to the said suits, and because the said records are irrelevant to the question here involved.

Objection overruled and exception saved.

307 At this point the further hearing of this cause was adjourned to June 11th, 1885.

JUNE 11TH, 1885.

Parties met pursuant to adjournment, when the hearing of the evidence in this cause was resumed, as follows:

Present: As before.

Geo. D. Reynolds' Testimony.

GEO. D. REYNOLDS, being duly sworn, testified as follows:

Direct examination by Mr. CARR:

Q. Mr. Reynolds, will you state if there was a book called the stock book of the St. Louis, Hannibal and Keokuk R. R. Co., which contained a list of the stockholders therein, and, if so, where you saw that book last and when?

Counsel for trustee objects as immaterial. Objection overruled and exception saved.

A. I was one of the counsel for Mr. Josiah Fogg in the case in this court in which he was complainant and The St. Louis, Hannibal & Keokuk Railroad Company and St. Louis and Keokuk Railroad Company were defendants. (I am referring now to the equity case.) In the preparation of that case for trial we procured an order from the special master who was taking the testimony
308 in the case, Judge M. R. Cullen, for the production for our inspection of various books and papers in the custody of the officers of the St. Louis, Hannibal & Keokuk Railroad Company. Under that order the counsel for that company produced to us, among others, the stock-certificate book of the St. Louis, Hannibal & Keokuk Railroad Company as the only stock book that had ever been kept by that company—that is to say, all accounts of stock were kept in that book, and the stock account appeared by examination of the stubs or return certificates of stock that were in that book. They kept no regular stock ledgers or journal, but kept their stock account in this stock-certificate book. I examined those two books. (They were in two volumes—two bound books in the ordinary form of stock certificates.) I examined them stub by stub or certificate by certificate, and made a full and careful abstract from those stubs of the stock transactions of the company from the first certificate issued down to the
309 last. The last numbered certificate was—or the certificate commenced with number one, and the last numbered certificate, as I find by looking at my notes, was 86. After I completed the inspection of the books I returned them to the attorneys for those two companies, and the attorneys were Messrs. Mason G. Smith and John A. Harrison, of this city. The books were not introduced or used in evidence in the trial of the case because counsel to it, in taking the testimony, either agreed on the facts that I expected to show by the production of the books, or the matters were brought out by the oral testimony of Mr. W. W. Walker, the then president

of the St. Louis, Hannibal and Keokuk R. R. Company. I have since endeavored to find the books, and the best information I could obtain about them is that they were taken to Iowa by Mr. Walker. I had Messrs. Harrison & Smith look through their office, and have looked through their office with them to find the books and
310 they are not there, and they informed me that as they were too large to place in their safe they took them up into the room of Mr. Walker, who was then also president of some projected railroad, and had an office in the Granite building, in this city, and where, I believe, this company had an office, and that they had been left there, and that some time ago Mr. Walker, removing from here to Iowa, had taken everything that he had there with him.

Counsel for trustee objects to the last part of above testimony as being hearsay.

WITNESS (continuing): Of course, this last part of my statement about Mr. Walker having the books is information and hearsay that I would get from the attorneys, or the gentlemen who were the attorneys, for that company. I am asked where Mr. Walker now is? I don't know of my own knowledge. From general report among those people who are acquainted with him, I understand that he is somewhere in Iowa as his nominal residence, but that he is
311 between Iowa and California. This, of course, is on general report. I know nothing about it, as I have not seen Mr. Walker since the day his examination was taken in the case that I have referred to, which was something over a year ago. I have with me the original and the only notes that I made from that book, together with a statement of stock account that I made up from that inspection.

Q. It is an abstract of all the stockholders compiled from the book?

A. Yes; but it is a good deal more than that.

The MASTER: In regard to the mere matter of hearsay, Mr. Case, the only statement he makes is as to what was told him by Mr. Smith and Mr. Harrison. I presume that could be very easily verified by bringing them over here, if you insist on bringing them.

Mr. CASE: I won't insist on that. I simply want to enter an objection to introducing testimony on the abstract.

Q. I want to describe the stock-certificate book a little more
312 fully in this respect. Did it have blank certificates in it which, when a stock certificate was issued to a stockholder, was filled up in the proper manner, stating the number of shares that such stockholder had in the corporation and this certificate cut out of the book, and on the stub was there a memorandum when and to whom and for what number of shares this certificate was issued to such stockholder?

A. The certificates in those books were in this form. I have a literal copy of the form of the certificate.

On the left-hand side is a blank, left for the insertion of the number. On the right, on the corner, is a blank, left for the number of

shares. On the left-hand margin is printed, "Shares $100 each." Then comes the heading, "State of Missouri. St. Louis, Hannibal, and Keokuk Railroad Company." Between the "Railroad" and and "Company" is a picture or engraving. Then the body of the certificate reads in this way: "This is to certify that —— —— entitled to — shares of the capital stock of the St. Louis, Hannibal &
313 Keokuk Railroad Company, transferrable in person or by attorney only on the books of the company on the surrender of this certificate. This certificate will not be valid unless countersigned by the treasurer and transfer agent of the company. In witness whereof the president and secretary have hereto subscribed their names this — day of ——, A. D. 18—." A blank for the signature of the president, a blank for the signature of the secretary on the right-hand side of the certificate, then on the left hand, foot of the certificate, the words "countersigned," and under that a blank for the signature of the treasurer, and under that another blank line for the signature of the transfer agent.

The MASTER: A place for the seal?

A. I don't remember about that. I have no mark there of that kind. Then this was attached in the book to the ordinary stub that is used in transfer books of corporations—that is to say, I have not a copy of the stub here, because it was in such common form that I did not think it was necessary.

Mr. CASE: Then you mean to state that this form which
314 you have just stated is the form of the certificate which was given to the stockholder and detached from that certificate book?

Q. And which the stockholder himself held as evidence of his shares of stock?

A. Yes. This would be filled out, of course, with the number of shares and the name of the stockholder to whom it was issued, and the date, and then signed by the officers, and then torn out of the book and given to the stockholders, and there would then be left to show who had the stock and the number of shares, and the number of shares that they had and the date issued to them, and from whom it was acquired, a stub on which was filled out the number of shares, the date of issue, the name of the party to whom issued, the name of the party from whom obtained—that is to say, I found in looking over the book that, if it was an original issue from the company, there was no name of the assignor put in, but if it came from a person who had already had stock issued to him, then the name
315 of the person was put in as assignor.

Q. And the original holders of the stock?

A. Yes, sir.

Q. Only the name from whom the stock was acquired?

A. And also, of course, the name of the person to whom it was then issued, and then at the bottom of it was a line about this way: "Received this certificate" such a date; blank for the date and a place for the signature of the person to whom the shares were delivered. Those are the stubs, and it was from an inspection of those stubs that I made up these papers here that I have and ar-

rived at a statement of who the stockholders of the company were; and I would state here that I showed it to Mr. Walker, who was then the president, after I had made it up, and he told me that that was the first time he had ever seen a connected statement made of the stock transfers of that company.

Q. Please state if there was any stock in the name of John I. Blair in the book you have described; and, if so, the number of shares and the date when the certificate or certificates were delivered to him.

316 Counsel for trustee objects to any testimony which tends to show the contents of the said books, for the reason that it does not appear that said stock books have been destroyed or are out of the reach of the process of this court, and it does not appear that the witness now testifying is or ever has been an official of the St. Louis, Hannibal & Keokuk Railroad Company or the St. Louis & Keokuk Railroad Company, or that it was ever any of his duties to take charge of said stock books; and for the further reason that any testimony concerning said stock books is secondary evidence and entirely irrelevant, immaterial, and incompetent evidence in this case.

Objection overruled and exception saved.

The MASTER: I understand you to say that you expect to show by the receiver that he has not got this book in his possession.

WITNESS: Yes, sir. I would like to state that I am perfectly willing to submit the notes that I made to the counsel on the other side. I would like to state, so that anybody may understand
317 it, that I made up a list of the stockholders as they appeared there owning stock; then I went through the books to show which of them were original issues, which are on these two pages here (indicating), and which were acquired through second hands.

Mr. CASE: Why don't you put them in evidence?

Counsel for Josiah Fogg offer in evidence the memoranda made from the stock book, subject to the objections of the counsel for trustee, as heretofore given.

WITNESS: I am willing to put my notes in evidence for the convenience and inspection of counsel on the other side.

Mr. CASE: With the understanding between counsel that the notes remain in the possession of Mr. Reynolds, and to be produced at the hearing of this cause; that they are Mr. Reynolds' own individual property.

WITNESS: I find from my notes that on the 7th of March, 1881, certificate numbered 52½ was issued to John I. Blair for 4,250 shares of stock, as an original issue direct from the company to him. On the same date certificate numbered 52¾ was issued to Moses
318 Taylor for 4,250 shares. The books, when I examined them——

The MASTER: What date was your examination?

A. I examined them some time after December 3rd, 1883, for the last issue of stock on the books that I examined was the 3rd of De-

cember, 1883, when the last certificate in them, No. 86, was issued to Mr. W. W. Walker for ten shares, as a transfer from N. S. Dimmitt to him, and down to that date the books showed that there were 27,042 shares of stock issued and outstanding.

Q. How much a share?

A. $100. That is $2,704,200 outstanding at that time.

The MASTER: That was the old stock, was it not, Mr. Reynolds?

A. No, sir; the new company.

Q. What we call the new corporation? The old was the St. Louis & Keokuk?

A. And I also found certificate numbered 38, of date August 10th, 1875, down to De Witt C. Blair for 32 shares, on a transfer to him by George Douglass. Those were all the stock certificates that I found to the Blair or Taylor families or names.

319 The MASTER: There were no transfers out of them of this stock?

A. No, sir—that is, as far as the stock books show. The certificates had been received by them and no return of the stock or transfers from it. My recollection about the Moses Taylor certificate is that it was noted on it in one of two ways, which I am not very clear about. Either this way, "Delivered to John I. Blair to be delivered to Moses Taylors executors," or "Delivered to W. W. Walker for transmitting to Moses Taylor or his executors." There is something about executors in there, and the original signature by Moses Taylor, or what purports to be his original signature, to the receipt, to the best of my recollection, does not appear on the stub, and I know there was something said somewhere in there in connection with that about the executors of Taylor, but the connection of it I am not clear about. I didn't make a note of it.

The MASTER: When did Mr. Taylor die?

Mr. CARR: About that time, I think. I think in the fall of '81 or the spring of '82; I am not sure.

320 WITNESS (continuing): There is something in that connection that suggested to me that Mr. Moses Taylor was dead.

Mr. CARR: What date was that?

A. Some time after the 3rd of December, 1883, that I examined the books.

Q. But the date of the stock.

A. The date of the certificate of stock was the 7th of March, 1881.

Mr. CARR: I think he was dead then.

WITNESS: These stubs did not pretend in the majority of cases to show the date of delivery to the parties; it would the date of the issue of the stock. I believe in some few cases there was a memorandum made showing the date of the receipt of the stock, but it was so exceptional that I did not make a note of it. It was not in line with anything that I wanted to see. Now, this collection of notes of mine which has been placed at the disposal of counsel includes not only what I got directly from the books, but my own arrangements in tables of the information that I compiled from them.

321 I think an inspection of the paper will show what is right from the book and what are my tables from the book; but

all the information in there comes from the books; that is all I have to say about it.

Cross-examination by Mr. CASE, counsel for trustee:

Q. Do you recollect the date that the lawsuit was brought against the St. Louis & Keokuk R. R. Co.?
A. I would not undertake to say it.
Q. You were not in that case?
A. I was. I tried it twice.
Q. Do you remember the date of the last judgment in this case?
A. No, sir.
Q. Do you remember the day?
A. I remember the fact of the judgment, but I wouldn't undertake to give the date.
Q. Do you remember the date that you brought the equity suit against the St. Louis & Keokuk Railroad Company and the St. Louis, Hannibal & Keokuk Railroad Company?
A. Without reference to my papers I would not undertake to do it, though I wrote the body of the petition.
Q. Can you tell about the time?
A. It was somewhere in May, 1883.
Q. Can you tell the date from your personal recollection that you obtained the judgment in that case against the St. Louis,
322 Hannibal & Keokuk Railroad Company?
A. I know all about all of those suits, but the records will show those facts.
Q. But what I want is this——
A. I cannot tell any dates from memory of any suits I have. I make it a rule to keep books in which I put all such memoranda down, and do not attempt to charge my memory with them, and could not testify from memory as to any of the dates. My experience is that attempting to do that in the multitude of business a man is very apt to make mistakes which lead to confusion.
Q. Don't you know, as a matter of fact, that you did not get the judgment against the St. Louis, Hannibal & Keokuk Railroad Company in the equity suit until some time in May, 1884, or long after the appointment of a receiver in this case?
A. I would not undertake to state the date accurately. I know positively, however, that it was obtained after and some time after the appointment of a receiver in this case, because I know that the receiver was made a party to that suit before the finish-
323 ing of the taking of the testimony, and during an adjournment that the commissioner had made in the taking of the testimony on application of the counsel for the railroad companies during vacation, as you might call it, during the cessation of the hearing, the application for the appointment of the receiver was made, and before the time for resuming the taking of testimony had arrived, on application, the receiver was made a party and authorized to appear before the master to complete at the hearing the taking of testimony, and when we appeared again before

the commissioner to resume the taking of testimony in the case the counsel that had before appeared in the name of the railroad companies announced that they then appeared as attorneys also for the receiver, Mr. Case, and of course the hearing was not until some time after that, and it consequently results that the judgment or decree was rendered not until some time after the appointment of the receiver in this case, but as to giving the dates I won't pretend to do it.

324 Q. Don't you know, as a matter of fact, that the judgment which you obtained in the lawsuit—by lawsuit I mean the suit at common law brought against the St. Louis & Keokuk Railroad Company—was not obtained until the month of October or the latter part of the year 1882?

A. Oh, yes; it was obtained at the fall term of 1882 of the United States circuit court of this district.

List of Stockholders of the St. Louis, Han. and Keok. R. R. Co., as Shown by Books, to Dec. 12th, 1883.

No. of c't'f'te.	Name.	Shares.	Shares unsold.
1	Mo. & Iowa R'w'y Cons. Co.	592	+ 11,500 = 12,092.
2	Geo. Greene	224	+ 220 = 444.
3	A. B. Meeker +	264	
4	J. H. Wram	48	
5	W. W. Walker	288	+ 96 + 10 = 394. Director.
6	S. H. Kunland	256	
9	Geo. H. Ely +	256	
12	D. T. Waddy	32	
13	Walton Perkins	32	Director.
14	J. W. Barret	8	
15	H. D. Booge & Co. +	32	
16	Wm. Buchanan	32	Director.
18	D. W. C. Rowley +	128	
19	R. V. Bonnell +	40	
20	L. Daniels +	32	
21	F. J. Upton +	32	
325			
22	J. W. Hutchinson & Co. +	32	
23	W. W. Walker, trustee	32	
24	H. B. Walker +	32	
25	Jas. J. Walker	32	
26	Chas. E. Walker	32	
27	Dan'l P. Eells +	128	2,680 shares.
28	Wm. Greene & Co.	32	
32	M. Brown	64	
		2,680	Total shares br't for'd.
33	P. Mansen +	64	
34	S. P. Wisner	128	
34	" " "	32	
35	H. B. Stibbs +	16	
37	T. A. Wilcox	16	
38	D. C. Blair +	32	Director.
39	Geo. Douglas	128	Director.
40	W. R. Switzer	32	

Ltst of Stockholders, &c.—Continued.

No. of c't'f'te.	Name.	Shares.	Shares unsold.
41	A. H. Spangler +	64	
42	Wm. Greene	22	
43	J. W. Hutchinson +	10	
44	Geo. Greene	220	
45	L. P. Jackson	1	
46	Oliver Smith +	1	
47	Joe McCune	1	Director.
48	J. S. Bockel	1	
49	W. H. Black +	32	
50	Geo. H. Greene	5	
51	F. H. Greene	5	
52¼	Mo. & Ia. R'y Con. Co.	11,500	
52½	J. J. Blair +	4,250	
52¾	Moses Taylor +	4,250	
53		3,000	
326			
53½	E. M. Greene +	5	=64.
54	E. M. Greene	5	
55	E. M. Greene	5	
57 to 75	E. M. Greene	49	
56	W. W. Walker	96	
76	Mary A. Ely +	319	
77	John F. Ely	1	Director.
78	Wm. Greene	22	Director.
85	Smith & Harrison	40	
86	W. W. Walker	10	
	Total	27,042	Shares out.

Art. 3 *of Art. Ass., Chapt.* 37, *Arts.* 1 *&* 2, *Filed June* 13, 1872.

Capital stock, $6,000,000—shares 100.

Subscribers in articles:

Geo. Greene	10
W. W. Walker	10
Geo. Douglas	10
John F. Ely	10
Mo. & Iowa R'w'y Cons. Co., by W. W. W.	1,860
J. W. Barrett	10
S. R. Woolfolk	10
D. T. Waddy	10
Walton Perkins	10
N. S. Dimmitt	10
Wm. Buchanan	10
Sam'l P. Wisner	1
A. J. Reynolds	10
Jas. D. Pitt	1
327 W. B. Elliott	1
	2,963 shares orig. sub.

St. Louis to Keokuk	180	miles.
Lincoln Co. Branch	10	"
Branch	5	"
About	195	"

Directors not having stock issued :

S. R. Woolfolk (subscriber).
S. J. Reynolds "
N. S. Dimmitt "
W. B. Elliott "
Chas. E. Vail, not a subscriber.

No. of ctft.	Date.	Shares.	To whom.	From whom & from—	Ctft.	Remarks.
1	Aug. 16, '73	3,144	Mo. & Iowa R. C. Co.	Original issue		All but 592 shares sold.
7	" 16, '73	160	Geo. Douglas	" "		37 sold to No. 38 & new ctft., No. 39, issued.
14	" 16, '73	8	J. W. Barrett	" "		
15	" 16, '73	32	H. D. Booge & Co.	" "		
19	" 16, '73	40	R. V. Bonnell	" "		
21	" 16, '73	32	F. J. Upton	" "		
29	" 16, '73	64	E. M. Green	" "		All cut up in new ctfts.—5 to 53½, 5 to 54, & 5 to 55.
31	" 16, '73	32	P. Martell. Sold	" "		5 to No. 50; 5 to No. 51.
33	" 16, '73	64	R. Mansen			22 to Martell, No. 52.
34	" 16, '73	128	S. P. Wisner	" "		Calls for 160 shares, for surrender of No. 30, which was only for 32 shares; so I carry 128 as new issue.
35	June 18, '74	16	H. B. Stibbs	" "		
36	" 18, '74	16	H. B. Stibbs	" "		
42	Oct. 27, '75	22	Wm. Green	" "		Sold to T. A. Wilcox.
43	" 27, '75	10	J. W. Hutchinson	" "		
44	Jan'y 8, '77	220	Geo. Greene	" "		
45	" 8, '77	1	L. P. Jackson	" "		
46	" 8, '77	1	Oliver Smith	" "		
47	" 8, '77	1	Joe McCune	" "		
48	" 8, '77	1	J.S. Boekee; 3,992, total	" "		
56	Dec. 1, '82	00	W. W. Walker*	" "		*Error.
79	Oct. 10, '83	50	Mo. & Iowa R. C. Co.	Following one in 2d book.		Transf'd to No. 80, '1, '2, '3, & '4.
52¼	M'ch 7, '81	11,500	Mo. & Iowa R. C. Co.	Original issue		
52½	" 7, '81	4,250	J. I. Blair	" "		
52¾	" 7, '81	4,250	Moses Taylor			
53	M'ch 7, '81	3,000				Given to W. W. Walker in blank to enable him to complete a transaction with Joe M. Douglas for Lincoln county stock.
329		$2,704,200	in shares out to Dec.	3d, 1883, which is the date	of issue	of last certificate (No. 86).

Original Issues.

No. of certificate.	Date.	Owners.	No. of shares.	3,144 2,136 1,008
1	Aug. 8, '73	Mo. & Ia. R'y Con. Co.	3,144	Less 224 (2) + 264 (3) + 48 + 288 + 256 + 320 + 256 + 96 + 32 + 32 + 32 + 32 + 96 + 128 + 32 = 2,136.
2	" 16	Geo. Greene	224	Out of ctf. 1.
3	" 16	A. B. Meeker	264	" " 1.
4	" 16	J. H. Wrum	48	" " 1.
5	" 16	W. W. Walker	288	" " 1.
6	" 16	S. H. Kunland	256	" " 1.
8	" 16	Jno. F. Ely. Sold	320	" " 1; transf'd to 76 & 77.
9	" 16	Geo. H. Ely	256	" " 1.
10	" 10	P. B. Weare. Sold	96	" " 1; transf'd to No. 56.
11	" 16	S. R. Woolfok. Sold	32	" " 1; transf'd to No. 49.
12	" 16	D. T. Waddy	32	" " 1.
13	" 16	Walton Perkins	32	" " 1.
16	" 16	Wm. Buchanan	32	" " 1.
17	" 17	Jas. L. Bever. Sold	96	" " 1; sold 32 to No. 40, 64 to No. 41.
18	" 16	D. W. C. Rowley	128	" " 1.
20	" 16	L. Daniels	32	" " 1.
330			2,136	Bal. in No. 1 = 1,008 416—592.
22	Aug. 16, '73	J. W. Hutchinson & Co.	32	Out of ctft. 1.
23	" 16	W. W. Walker, trustee	32	" " 1.
24	" 16	H. B. Walker	32	" " 1.
25	" 16	Jas. J. Walker	32	" " 1.
26	" 16	Chas. E. Walker	32	" " 1.
27	" 16	Dan'l P. Eells	128	" " 1.
28	" 16	Wm. Greene & Co.	32	" " 1.
30	" 16	H. B. Stibbs	32	" " 1; sold to Wisner ctft. 34.
32	" 16	M. Brown	64	" " 1.
			416	Out of ctft. 1.
Ctft. 1		Mo. & Iowa R'y Con. Co.	592	Left in it after transfer.

No. of ctft.	Date.	Sh.	To whom issued.	From whom & out of what ctft. transferred.		
	1873.					
34	Aug. 16	32	S. P. Wisner	H. B. Stibbs	30	Ctft. 30 was for only 32 shares. Error.
	1874.					
37	Dec. 31	16	T. A. Wilcox	H. B. Stibbs	36	
38	Aug. 10, '75	32	D. C. Blair	Geo. Douglas	7	
39	" 10, '75	128	Geo. Douglas	Geo. Douglas	7	Bal. after transfer to 38.
40	Sept. 28, '75	32	W. R. Switzer	Jas. L. Bever	17	
41	Sept. 28, '75	64	A. H. Spangler	Jas. L. Bever	17	
49	Jan'y 22, '79	32	W. H. Black	S. R. Woolfolk	11	
50	Feb'y 24, '80	5	Geo. H. Greene	P. Martell	31	
51	" 24, '80	5	F. H. Greene	P. Martell	31	
52	" 24, '80	22	Peter Martell. Sold	Peter Martell	31	Bal. after transfer 50 & 5 transf'd to No. 78.
53½	Dec. 1, '82	5	E. M. Greene	E. M. Greene	29	
54	Dec. 1, '82	5	E. M. Greene	E. M. Greene	29	
55	" 1, '82	5	E. M. Greene	E. M. Greene	29	
56	" 1, '82	96	W. W. Walker	P. B. Weavre	10	
57	" 1, '82	5	E. M. Greene	E. M. Greene	29	
58	" 1, '82	5	E. M. Greene	E. M. Greene	29	
59	" 1, '82	5	E. M. Greene	E. M. Greene	29	
60	" 1, '82	5	E. M. Greene	E. M. Greene	29	
61	" 1, '82	5	E. M. Greene	E. M. Greene	29	
62	" 1, '82	5	E. M. Greene	E. M. Greene	29	
332						
63	Dec. 1, '82	5	E. M. Greene	E. M. Greene	29	
64	" 1, '82	2			"	
65		2			"	
66		1			"	
67		1			"	
68		1			"	
69		1			"	

70	----------	1	----------	----------	"	
71	----------	1	----------	----------	"	
72	----------	1	----------	----------	"	
73	----------	1	----------	----------	"	
74	----------	1	----------	----------	29	
75	----------	1	Ditto. Ditto	ditto	8	
76	Jan'y 24, '83	319	Mary A. Ely	John F. Ely	8	
77	" 24, '83	1	John F. Ely	" " "	52	
78	May 4, '83	22	Wm. Green	Peter Martell	79	Transferred to No. 85.
80	Oct. 10, '83	10	N. S. Dimmitt	Mo. & Ia. R'y C. Co.	79	Transferred to No. 85.
81	" 10, '83	10	N. S. Dimmitt	" " "	79	Transferred to No. 86.
82	" 10, '83	10	N. S. Dimmitt	" " "	79	Transferred to No. 85.
83	" 10, '83	10	N. S. Dimmitt	" " "	79	Transferred to No. 85.
84	" 10, '83	10	N. S. Dimmitt	" " "	80–81	
85	Dec. 1, '83	40	Smith & Harrison	N. S. Dimmitt	83–84	
86	Dec. 3, '83	10	W. W. Walker	N. S. Dimmitt	82	

333 *Form of Ctft.*

No. —. STATE OF MISSOURI. — shares.

St. Louis, Hannibal and Keokuk Railroad (picture) Company.

Shares stock, $100 each.

This is to certify that —— —— entitled to — shares of the capital stock of the St. Louis, Hannibal and Keokuk Railroad Company, transferrable in person or by attorney only on the books of the company upon the surrender of this certificate. This certificate will not be valid unless countersigned by the treasurer and transfer agent of the company.

In witness whereof the president and secretary have hereunto subscribed their names this — day of ——, A. D. 18—.

—— ——, *President.*
—— ——, *Secretary.*

Countersigned.
—— ——, *Treasurer.*
—— ——, *Transfer Agent.*

334 Attached to stub of ctft. No. 80 I find this:

St. Louis, Hannibal & Keokuk R. R., office of gen'l sup't & gen'l freight agent.

W. W. Walker, gen'l sup't & gen'l freight agent.

ST. LOUIS, MO., *Oct.* 17*th*, 1883.

Rec'd of the St. L., H. & K. R. R. Co. by the hand of W. W. Walker five certificates of the capital stock of said Co., being certificates Nos. 80, 81, 82, 83, & 84, for 10 shares each, or $5,000, said stock being paid me in pursuance of a contract between myself & S. P. Wisner, pres't of said Co., dated about Oct. 1st, 1875, and in full & final settlement of said contract.

N. S. DIMMITT.

Each of the ctfts are rec'd thus: "Received certificate Oct. 10th, 1883, for delivery to N. S. Dimmitt.

W. W. WALKER.

& each purports to be in surrender of No. 79, which was issued to Mo. & Iowa R'way Cons. Co.

When Nos. 80, 81, 83, & 84 were transferred to S. and H. they receipted for them Dec. 5, 1883, & W. W. Walker rec'd for No. 82 Dec. 4, '83.

335 Mr. Reynolds offers the original of the original deed of transfer from the St. Louis & Keokuk Railroad Company to the St. Louis, Hannibal & Keokuk Railroad Company, marked Exhibit No. 4.

Counsel for trustee objects to it as being irrelevant, immaterial, and incompetent testimony. Objection overruled.

Said deed of transfer is in words and figures as follows:

Deed Transferring all the Property of the St. Louis & Keokuk R. R. Co. to the St. Louis, Hannibal & Keokuk R. R. Co.

This indenture, made this 4th day of March, A. D., 1873, between the St. Louis and Keokuk Railroad Company, a corporation created under and by virtue of the laws of the State of Missouri, party of the first part, and the St. Louis, Hannibal and Keokuk Railroad Company, a corporation created and organized in pursuance of the laws of the State of Missouri, party of the second part, witnesseth: Whereas the said party of the first part is the owner of the railroad situate in the State of Missouri, now partly finished and partly in process of construction, known as the St. Louis and Keokuk railroad; and whereas, by an act of the General Assembly
336 of the State of Missouri entitled "An act to amend chapter 63 of the General Statutes, entitled railroad corporations, so as to authorize the consolidation, leasing, and extension of railroads," approved March 24th, 1870, it was, among other things, provided that any railroad organized in pursuance of the laws of the State of Missouri or of any other State or of the United States might lease or purchase all or any part of a railroad, with all its privileges, rights, franchises, real estate, and other property, the whole or a part of which was in the State of Missouri and constructed, owned, or leased by any other company if the lines of the road or roads of said companies were continuous or connected at a point either within or without the State of Missouri on such terms as might be agreed upon between said companies respectively;

And whereas the respective railroads of the said parties of the first part and second part are continuous and connected at a point within the State of Missouri; and whereas the party of the second part is desirous of purchasing the said St. Louis and
337 Keokuk railroad, with all its privileges, rights, franchises, real estate, and other property, upon the terms which have been and are agreed upon between said parties of the first and second part, respectively, and which are hereinafter more fully set forth;

And whereas the holders and owners of a majority of the stock of each of the said parties of the first and second part-, respectively, have assented in writing to the said purchase, being the same which is witnessed by this indenture, and certificates thereof signed by the president and secretaries, respectively, of the said parties of the first and second part- have been filed in the office of the secretary of said State of Missouri;

And whereas the said party of the second part has agreed to assume certain contracts, liabilities, and obligations heretofore made or incurred by or imposed upon said party of the first part, and to stand in its place and stead with reference thereto, and certain sui s

at law or in equity pending against said party of the first part, as hereinafter specified:

338 Now, therefore, this indenture witnesseth that the party of the first part, the St. Louis and Keokuk Railroad Company, in consideration of the payments, undertakings, covenants, and agreements hereinafter mentioned and contained on the part of the said party of the second part, its successors and assigns, to be had, kept, and performed and by and with the assent, in writing, request, and direction of the holders and owners of a majority of the stock of said party of the first part for this purpose first had and obtained, has granted, bargained, and sold, and by these presents does grant, bargain, sell, and convey, unto the said party of the second part, the St. Louis, Hannibal and Keokuk Railroad Company, its successors and assigns, the entire railroad of the party of the first part, called and known as the St. Louis and Keokuk railroad, extending from its southern terminus, on the North Missouri railroad, west of St. Charles, in the State of Missouri, to its northern terminus, at or near the fair grounds near Hannibal, in the State of Missouri, and also all the lands

339 road-bed, embankments, tenements, hereditaments, appurtenances, buildings, fixtures, and machinery appurtenant and belonging to or connected with the said railroad or in any manner used or employed or to be used or employed in operating the same; and all rails, ties, fencing, and erections of every kind belonging to or upon or connected with the said railroad and the use thereof, and also all and every right of way, license, easement, right, privilege, and immunity of the party of the first part conferred by and possessed and enjoyed under and by virtue of its charter and of any and every act passed and to be passed amendatory thereof and otherwise, however obtained, with the full right and authority to have, hold, and use such rights of way, easements, rights, privileges, and immunities as fully as the party of the first part might or could if these presents had not been executed; to have and to hold all and singular the above-granted railroad, premises, property, estate, and effects, including the right of way, easements, licenses, privileges, and immu-

340 nities aforesaid, unto the said party of the second part, its successors and assigns forever; and it is further covenanted and agreed by the party of the first part that all bonds, notes, bills, moneys, subscriptions, choses in action, accounts, claims, and demands and assets, including its interest in the Ralls County Branch railroad and the fifteen hundred shares of fifty dollars each of the capital stock of said Ralls County Branch railroad owned by said party of the first part and all effects of every kind and nature belonging or owing to the party of the first part, shall be, and the same are hereby, sold, assigned, transfer-ed, and set over to the party of the second part, and that full power and authority is hereby vested in said party of the second part to enforce collection of the same, in its own name or otherwise, and to appropriate the proceeds thereof to its own use and benefit: Provided, however, and it is hereby expressly agreed, that nothing herein contained shall be

deemed or in any way or matter taken to affect the right of
341 corporate existence of the said party of the first part or to affect any powers or franchises the exercise of which may from time to time become necessary to protect the interests of the parties of the second part hereto according to the true intent and meaning of this instrument.

And the said party of the second part, the St. Louis, Hannibal & Keokuk Railroad Company, in consideration of the above grant and of the covenants and agreements herein contained and to be performed, fulfilled, and kept on the part of the party of the first part, hereby, for itself, its successors and assigns, covenants and agrees that it will, and does hereby, assume and will fully pay, satisfy, and discharge all the debts, liabilities, and obligations heretofore made or incurred by or legally imposed upon the said party of the first part for right of way, station grounds, ties, or bridging, and they hereby assume and will carry out the contract with Doan and Parker for grading in Lincoln county, and will stand in its place and stead with reference thereto and to all suits at law or in
342 equity now pending against said party of the first part, excepting only a certain claim of indebtedness and damages by John S. Wolfe against the party of the first part, and excepting the suit therein now pending in the circuit court of the United States for the eastern district of Missouri, wherein the said John S. Wolf is plaintiff and the party of the first part is defendant; and the said party of the second part*y*, for itself, its successors and assigns, does further covenant and agree that it does hereby, in place and stead of the party of the first part, assume the contract made and entered into on the 12th day of April, 1872, by and between the party of the first part and the Missouri and Iowa Railway Construction Company, and will do and perform in all respects all the contracts, agreements, and undertakings of the party of the first part, and will accept all things lawfully done or to be done on the part of said Missouri and Iowa Railway Construction Company under or by virtue of said last-mentioned contract as fully and in all respects as the same might or ought to be
343 done, performed, or accepted by the said party of the first part; and the party of the second part, for itself, its successors and assigns, does hereby further covenant and agree that for all valid and lawful full-paid stock of the party of the first part, lawfully issued in pursuance of its charter, by-laws, and regulations, and in the hands of *bona fide* holders and owners, and not heretofore repudiated or declared fraudulent by the board of directors of the party of the first part, the party of the second part will issue a like amount of stock in its own corporation, and upon surrender and transfer by the stockholders of the party of the first part to the party of the second part of their respective stock certificates or other evidences of ownership of such stock, the party of the
344 second part will issue and deliver to such stockholders respectively a certificate or certificates of corresponding amounts of stock in the company or corporation of the party of the second part—that is to say, for each and every share of stock in the corpo-

ration of the party of the first part so surrendered or transferred to them the party of the second part will issue and deliver to the person or persons, county, townships, or corporation so surrendering or transferring one share of stock in its own corporation, and for all legal, unforfeited, and unpaid or partly unpaid subscriptions to the stock of the party of the first part for which no certificates have been issued when such subscriptions are fully paid up to the party of the second part it will issue stock for the same in its own corporation.

And the said party of the second part, for itself, its successors and assigns, does hereby further covenant and agree that it will, at its own cost, risk, and expense, construct and complete so much of the said St. Louis and Keokuk
345 railroad as is yet unfinished in St. Charles, Lincoln, and Ralls counties, and will keep said railroad in good working condition and repair as a first-class railroad and so as to be suitable for the transaction of all the business that can reasonably be done thereon, and will operate the same as a part of its own line of road, and will perform all and every duty and obligation toward the public which the party of the first part would be legally bound to do and perform in said counties under its charter and the laws of the State of Missouri if these presents had not been executed.

And the party of the first part, for itself, its successors and assigns, hereby covenants and agrees (if required by the party of the second part) that it will for the full length of time permitted by its charter keep and continue at the cost and expense of the party of the second part (not exceeding, however, the amount of five hundred dollars per annum) its legal organization, and also at all times when
346 thereunto reasonably required by the party of the second part do and perform, at the expense of the party of the second part, all such reasonable acts, matters, and things as may be proper for the due protection, preservation, and enjoyment of the property hereby conveyed or intended so to be and to carry into effect the true intent and meaning of this instrument, and in default thereof the same may be done by the party of the second part, and therein the said party of the second part may use the name, power, and authority of the party of the first part; and, further, that the said party of the second part may, at any time and in all places, at its own cost and expense, use the corporate name of the party of the first part in any suits or proceedings wherein it shall be necessary or proper for the enforcement of its rights against third parties.

It is further understood, covenanted, and agreed between the parties hereto that the party of the second part shall have the right, and is hereby vested with full power and authority, to place mort-
347 gages and issue bonds on said railroad the same as on any other parts or portions of its line and the same as the party of the first part could have done if these presents had not been executed.

It is hereby further covenanted and agreed between the parties hereto that the party of the second part may from time to time, at its own expense, make such alterations, improvements, and addi-

tions in, upon, or to the property hereby conveyed as may be proper for its full enjoyment for railroad purposes, and in case said party of the second part, for more advantageous use of said property, shall at any time desire to acquire, obtain, or enjoy any additional lands, rights of way, or other property the said party of the first part, when thereunto reasonably required and indemnified against all expense and damage therefrom, shall aid therein with its corporate name, power, and authority, and in default thereof such name, power, and authority may be used by the party of the second part, after
348 fully indemnifying the party of the first part as aforesaid.

In witness whereof the parties hereto have respectively caused these presents to be signed by the presidents and secretaries of said corporations, respectively, and the respective seals of said corporations to be hereto affixed; all of which has been done in pursuance of the authority of the boards of directors of said corporations, respectively, and with the written assent of a majority of the stockholders holding and owning a majority of the stock of each of said corporations.

GEO. GREENE,
President of the St. Louis and Keokuk Railroad Company.
[SEAL.] WM. BUCHANAN,
Secretary of the St. Louis and Keokuk Railroad Company.
GEO. GREENE,
President of the St. Louis, Hannibal & Keokuk Railroad Co.
[SEAL.] WM. BUCHANAN,
Secretary of the St. Louis, Hannibal & Keokuk Railroad Co.

We, the undersigned stockholders in the St. Louis and
349 Keokuk Railroad Company, holders and owners of the number of shares of stock set opposite our respective names, do hereby give our written assent to the sale and transfer of the St. Louis & Keokuk railroad, with all its franchises, rights, assets, and effects, to the St. Louis, Hannibal & Keokuk Railroad Company, as provided and set forth in the foregoing indenture or deed of sale, and we hereby authorize, empower, and direct the president and secretary to execute the same by signing their respective names and affixing the corporate seal thereto and deliver the same to said St. Louis, Hannibal & Keokuk Railroad Company.

Dated this 4th day of March, 1873.

Names of stockholders.	No. of shares.
Lincoln county, by James M. McClellan, agent	3,000.
S. R. Woolfolk	Thirty-one (31).
D. T. Waddy	Twenty-one (21).
S. J. Reynolds	Twenty-one (21).
P. P. Parker	Twenty (20).
Fletch M. Doan	One (1).
Walton Perkins	Twenty-one (21).
A. K. Wilson	(21).
Nathan S. Dimmitt	21.
M. R. K. Biggs	20.

350	W. B. Elliott	21.
	J. W. Barrett	1.
	Peno township, Pike Co., Mo., by S. J. Dunkunn, com'r	400.
	Geo. Greene	1.
	W. W. Walker	1.
	Missouri & Iowa Railway Construction Co., by W. W. Walker, president	
	Wm. Buchanan	1.
	J. I. Walker	1.
	Jno. F. Ely	1.
	Geo. Douglas	1.
	S. P. Wisner	1.

We, the undersigned stockholders in the St. Louis, Hannibal and Keokuk Railroad Company, holders, and owners of the number of shares of stock set opposite our respective names, do hereby give our written assent to the purchase of the St. Louis and Keokuk railroad, with all its franchises, rights, assets, and effects, by the St. Louis, Hannibal and Keokuk Railroad Company, as provided and set forth in the foregoing indenture or deed of sale, and we
351 hereby authorize, empower, and direct the president and secretary of this company to accept of said deed and assent to the conditions contained therein by signing their respective names and affixing the corporate seal of this company to the same.

Dated this 4th day of March, 1873.

Names of Stockholders.	No. of shares.
D. T. Waddy	Ten (10).
S. R. Woolfolk	Ten (10).
S. J. Reynolds	Ten (10).
J. D. Pitt	One (1).
W. B. Elliott	One (1).
J. W. Barrett	Ten (10).
S. P. Wisner	One (1).
Walton Perkins	Ten (10).
Wm. Buchanan	Ten (10).
Geo. Greene	10.
W. W. Walker	10.
John F. Ely	10.
Geo. Douglas	10.

We, the undersigned, Geo. Greene, president, and Wm. Buchanan, secretary of the St. Louis & Keokuk Railroad Company, hereby certify that the holders and owners of a majority of the stock of the St. Louis & Keokuk Railroad Company have assented,
352 in writing, to the sale and transfer of said St. Louis & Keokuk railroad, together with all its rights, franchises, assets, and effects, to the St. Louis, Hannibal & Keokuk Railroad Company,

upon the terms and conditions set forth in the foregoing deed of conveyance.

Dated the 4th day of March, 1873.

GEO. GREENE,
President of the St. Louis & Keokuk Railroad Company.
[SEAL.] WM. BUCHANAN,
Secretary of the St. Louis & Keokuk Railroad Company.

We, the undersigned, Geo. Greene, president, and Wm. Buchanan, secretary of the St. Louis, Hannibal & Keokuk Railroad Company, hereby certify that the holders and owners of a majority of the stock of the St. Louis, Hannibal & Keokuk Railroad Company have assented, in writing, to the purchase of the St. Louis & Keokuk railroad, together with all its rights, franchises, assets and effects, by the St. Louis, Hannibal & Keokuk Railroad Company, upon the terms and conditions set forth in the foregoing deed of conveyance.

Dated the fourth day of March, 1873.

GEO. GREENE,
President of the St. Louis, Hannibal & Keokuk Railroad Company.
[SEAL.] WM. BUCHANAN,
Secretary of the St. Louis, Hannibal & Keokuk Railroad Company.

353 *Testimony of Josiah Fogg.*

JOSIAH FOGG, being duly sworn, testifies as follows:

Direct examination by Mr. CARR:

Q. Mr. Fogg, state whether you are the complainant in the cross-bill in this case of De Witt C. Blair, trustee, complainant, against the St. Louis, Hannibal & Keokuk Railroad Company and others, defendants.

A. I am.

Q. State if you were one of the incorporators, stockholders, and whether you held any office in the St. Louis & Keokuk Railroad Company at the time of its organization and for some time subsequent thereto.

A. I was not an incorporator, but I attended the first meeting of the incorporators in 1866 and was elected their secretary, and remained secretary until the spring of 1868.

The MASTER: Were you a stockholder?

A. I was. I became one after the meeting of the incorporators. There was no stock taken, but I became a stockholder late in 1866.

Q. You were present at the organization of the corporation, were you?

A. I was at the first meeting of the corporation.

Q. And became secretary of the company?

354 A. I was elected their secretary at that time.

Q. And continued as secretary of it till what time?

A. Till May, 1868.

Q. State what took place then.

Counsel for trustee objects to the testimony; overruled.

A. On the first of December, 1866, their stock books were brought in and a meeting of the stockholders was called, and the company organized by the election of directors on the first of December, 1866. I was elected then the secretary of the stockholders of the company.

Counsel for trustee objects to the materiality of the testimony, and also as being secondary evidence. Objection overruled and exception saved.

Witness (continuing): I continued secretary until May, 1868, and was then elected president.

Q. State how long you continued as president of the corporation.

A. Until the 22d of September, 1870.

Q. State if the corporation became indebted to you in any way, and, if so, in what way and to what amount, and if you had any settlement with the corporation in regard to said indebted-
355 ness, and, if so, state when and where?

Counsel for trustee objects, as they have already introduced the records of the judgments themselves.

The MASTER: I don't see the materiality of that.

Mr. CASE: We can't go behind the judgment obtained against the St. Louis, Hannibal and Keokuk Railroad Company, and have no intention of doing it.

The MASTER: You can't prove the judgment in that way.

Mr. CARR: We are showing the original indebtedness.

The MASTER: I don't see that that is material or relevant.

Mr. CASE: The St. Louis, Hannibal and Keokuk R. R. Co. is not on trial here.

The MASTER: You have got the record in the case, and that shows what the judgment is, for how much, and in whose favor.

Mr. CARR: The complainant in the cross-bill, Josiah Fogg, offers to establish the original indebtedness of the St. Louis & Keokuk Railroad Company to him as alleged in the cross-bill by his own oral testimony.

356 Counsel for trustee objects, because such parole testimony is seeking to explain written evidence and judgments of record which are now on the files of this court and have been introduced in evidence in this case.

Objection sustained. To this ruling of the master, the complainant in the cross-bill, Josiah Fogg, excepts.

Q. Mr. Fogg, will you state if you know how much of the St. Louis & Keokuk railroad was built prior to March the 3rd, 1873; and, if so, state how much was built and what part.

Counsel for trustee objects as being no part of this case. Objection overruled and exception saved.

A. The grading of the road from the northern line of Ralls county at the fair grounds at Hannibal was completed to Frankfort in Pike county, a distance of 18 miles, the bridges were built and completed,

the track was laid, and the cars were running over this much of the road.

The MASTER: When was that?

A. Prior to March 3rd, 1873.

357 Q. In other words, do you mean to say that the road was completed from the fair grounds at Hannibal across Ralls county to Frankfort, in Pike county?

A. I do.

Q. Now state if there was any grading done on the road in Lincoln county; and, if so, about how much prior to March 3rd, 1873?

Same objection as before, same ruling, and same exception.

A. Grading was commenced in Lincoln county in 1870 and continued until the—most of the time until this date of March 3d, 1873, and something over $250,000 had been expended in Lincoln county in grading and bridging.

Counsel for trustee further objects to the testimony as parole. The best evidence of such expenditures are the books of the company themselves, which should be introduced in evidence. Objection overruled and exception saved.

Direct examination continued by Mr. REYNOLDS:

Q. Mr. Fogg, you were engaged with the St. Louis & Keokuk Railroad Company down to what date?

A. 22nd of September, 1870.

358 Q. Were you familiar, from your connection with the business of the company, with the amount of subscriptions that had been made to it by the counties through which the line was proposed to run?

A. I was.

Q. What was the amount of the subscriptions of the several counties, naming—them and the amounts?

Counsel for trustee objects to the testimony as being immaterial and secondary evidence.

Mr. REYNOLDS: The object, if your honor please, that I have in asking that question is that I expect to show by this witness, and as will appear by the records of those two companies, that these stock subscriptions were part of the assets of that company; that they were always treated as subject to the lien by this claim of Mr. Fogg, and that subsequently passing to the new company, and Mr. Blair and Mr. Taylor, who are the principal bondholders, they passed subject to those equities, and that the company and

359 all parties in interest had recognized Mr. Fogg's claim as a lien upon this subscription as well as upon its road-bed. I propose to follow this testimony up. This is preliminary.

The MASTER: You can answer the question.

Exception saved by the counsel for trustee.

A. The first subscription was by Lincoln county, first made in

1868, for $300,000, and remade and modified a little, for the same amount, in June, 1870.

Q. That is to say, in 1870 the subscription was renewed with some added condition?

A. Yes; modifications. The amount was the same.

Q. How were those subscriptions of Lincoln county payable?

A. It was simply made payable to the company.

Q. To what company?

A. To the St. Louis and Keokuk Railroad Company, the inference was, payable in bulk. In the modification, in June, 1870, it was modified so that it could be paid as the work progressed.

Q. That is, the original subscription was for payment of a lump sum?

360 A. Yes.

Q. And on the completion of all the work?

A. Yes, sir; something of that kind.

Q. Then the modification that was made in 1870 was that it was to be paid in in installments as the work progressed?

A. Yes, sir.

Q. And that was $300,000?

A. That was $300,000.

Q. How was it paid? In what way?

A. By issue of county bonds.

Q. To whom turned over?

A. The county turned them over to a commissioner, and the commissioner to the contractor.

Q. Of the company?

A. Under the orders of the court and the reports of the engineer.

Q. To the contractor of the company, you mean?

A. To the contractor of the company.

Q. To the builder?

A. Yes; who did the work.

Counsel for trustee objects, as immaterial, irrelevant, and incompetent, and hearsay testimony.

Q. You know that is a fact, do you?

A. I was present at the meeting in June.

Q. Took part in it?

361 A. Took part in it; made some remarks before the court-house—a crowd in front of the court-house.

Q. And you know from your business with that company that that is the way it was done?

A. I do. I had the bonds engraved for them at their request.

Q. Can you state whether or not the whole, if not, how much, of the Lincoln county subscription had been paid prior to the 4th day of March, 1873?

A. About $270,000.

Q. Leaving them about $30,000——

WITNESS: Still due.

Q. At the time of the execution of the contract between the two railroad companies?

A. Yes, sir.

Q. Now, what other county, if any, subscribed, and how much did it subscribe?

A. The next county to subscribe was Pike county, in the autumn of 1869.

Q. What did it subscribe?

A. They subscribed $200,000, somewhat conditional.

Same objection as before.

Q. Do you know whether or not anything was paid of that subscription?

A. Nothing—nothing to my knowledge.

362 Q. Do you know from your inspection of the books and records of the company whether or not that Pike county subscription was transferred afterwards to Blair and Taylor—the right to it?

Counsel for trustee objects as being secondary evidence.

A. I think the subscription of the county never was paid at all.

Mr. CASE: I would like to have the ruling of the master on that.

The MASTER: I will hear what he has to say.

Mr. CASE: The question states whether he knows from the books of the company.

Q. From the books of the company or from your knowledge of the business of the company?

The MASTER: The books of the company might and might not be the best evidence. I can't say. The books seem to have disappeared.

Mr. REYNOLDS: We have those books. We want to show that this particular Pike county subscription is referred to there.

363 WITNESS: This subscription was not paid, but its place was taken by township subscription.

Q. Of what townships?

A. One is Pino; the other is——

Q. Pino, and some other township that you don't remember?

A. In which the town of Bowling Green is situated.

Q. In which the town of Bowling Green is situated?

A. Yes; I think that is it.

Q. You don't answer my question as to whether you know from your knowledge of the affairs of the company that this subscription was transferred over to Blair and Taylor?

A. To my knowledge, I don't know.

Q. What other counties, if any, subscribed?

A. Ralls county made a subscription to the main line of $200,000, and to a projected branch road joining this at New London running west, of $75,000.

Q. That is, altogether, $275,000?

A. Yes, sir.

Q. That was what was called the Ralls County Branch, was it?
A. Yes, sir.
Q. What became of the Ralls County Branch?
A. I don't know.

364 Counsel for trustee here objects to all the testimony which has been introduced or which may be hereafter introduced in regard to any stock subscriptions which were made to the St. Louis & Keokuk Railroad Company, and also hereby notifies counsel and the special master for this case that he shall move to strike out this testimony upon the hearing before the court.

Q. Don't you know that the Ralls County Branch was subsequently merged into the main line?
A. To my own personal knowledge, I think not. I think I don't know. I think it was done, but not to my personal —. I was not connected with the road at that time.
Q. What was that Ralls county branch? Where did it run from?
A. From New London.
Q. To where?
A. It was projected to run in a westerly direction towards the westerly line of Ralls county.
Q. Was there a road built there?
A. I think not.

365 Q. Now, how much of the Ralls county subscription had been paid prior to the 4th of March, 1873?

A. During the summer (I want to answer at a little length) there had been about $80,000 of this money paid over—of those bonds paid over—county bonds. To my own knowledge I don't know how much was paid at the 3rd of March, 1873.
Q. 1873?
A. 1873—I mean 1873.
Q. All you know of having been paid over, then, is this $80,000?
A. Yes, sir.
Q. That is, in the summer of 1873?
A. Yes, sir.
Q. Summer of 1870?
A. '70—yes, sir; summer of '70.
Q. Do you know what was called the Pike County Short Line; do you know what that was?
A. I do, sir.
Q. Well, will you please state what connection that had and what the object of that was; what connection it had with the main line and what the object of it was?

Counsel for trustee objects.

Mr. Reynolds: The reason of that is that it appears by an examination of the record in this case—already in evidence—of these two companies that it was, in the first place, proposed to run this
366 road, as called for in its charter, down along the river, following the river bank, by way of the town of Louisiana. The company—or its managers, rather—and the people along the line

wanted to save the bend that was involved in going into Louisiana, and the first scheme was to construct what was called the Pike County Short Line, which was a branch that left the main line through the northern part of Pike county and ran through Bowling Green, and then connected with the main line south of Bowling Green again, and where the main line would have swung out coming from Louisiana. That was the Pike County Short Line. When the new company was organized in 1873 its route, as described in its articles of association, came over the ground that the old line called for until it got to where the Pike County Short Line intersected it, and then came down along the Pike County Short Line by that route through Bowling Green and left out Louisiana, and the road was constructed along what was first the Pike County
367 Short Line. It is necessary to show this so as to get the testimony in a connected form, as the records themselves don't show it very clearly. That is the object of this inquiry.

Counsel for trustee objects as having no bearing on this question.

Mr. REYNOLDS: The bearing will come in in this, that there were bonds issued to the Pike County Short Line, and subscriptions to that went over to these parties that built the new road, and were recognized as bonds subject to the liens of all these claims that we have got. It is part of the scheme of the general remodeling of the road, and it is necessary so that one may have a clear idea of exactly what was done.

Objection overruled and exception saved.

Q. What connection did the Pike County Short Line have with the main line?

A. In the original charter of the St. Louis & Keokuk Railroad Company it was mentioned that the road was to pass through the city of Louisiana.

368 Counsel for trustee objects to any testimony being introduced concerning the charter. The charter is the best evidence.

Objection overruled and exception saved.

WITNESS: The object that Judge Dimmitt and myself went to Jefferson City—I was up there three or four times to get the Legislature to strike out from the original charter the name of the city of Louisiana, and spent considerable time endeavoring to get this done at one time.

Q. Never mind going into that. What was it done for?

A. The object was that this subscription of Pike county was conditional upon the road passing through Bowling Green; therefore we wanted the city of Louisiana struck out, and then the road could pass through Bowling Green, and we could have this $200,000 subscription of Pike county.

Q. You didn't get that alteration of the Legislature?

A. Couldn't get it.

Q. Then what object was there in getting up the Pike
369 County Short Line?

A. Then, in order to carry out this plan under the general State law, a corporation was organized, called the Pike County railroad, and the townships made subscriptions to it amounting to as much or more than the original county subscription.

Counsel for trustee here notifies the attorneys for Mr. Fogg that he shall object, in the event of any recovery in this cause, having this testimony taxed as costs, the same being entirely irrelevant to the questions at issue.

Q. Did the same parties organize the Pike County Short Line that controlled the main line?

A. I think only in part.

Q. Did they control it?

A. They were mostly, I think, a local board, with some that were interested in the old company and some new names put into the new company.

Q. Now, Mr. Fogg, referring to page 93 of the records of the St. Louis & Keokuk Railroad Company, there is an account on that page which I will call your attention to, amounting to $19,662.75,
370 and I will ask you whether the two items referred to in there as in the name of Josiah Fogg are the ones on which your judgment was recovered in this case.

Counsel for trustee objects as parole testimony.

A. They are.

Q. Now I will call your attention to the fact that the total of that account was $19,662.75; you notice that?

A. Yes, sir.

Counsel for trustee objects.

Q. I will call your attention now to page 104 of the same record, and I will ask you whether the $19,662.75 there referred to, that was assumed by John S. Woolf, is the same account in which your two items occur and are included.

Objected to as incompetent and irrelevant and being parole testimony upon a judgment record. Objection overruled and exception saved.

A. It is the same,

Q. Did you ever take Mr. Woolf for that or did he ever pay it to you?

A. I never took him for pay and he paid me nothing.

371 Same objection, same ruling, and same exception.

Q. Now, Mr. Fogg, have you read over and are you familiar with what is known as the contract between the St. Louis & Keokuk Railroad Company and the Missouri and Iowa Railway Construction Company, of date 12th of April, 1872?

A. I have seen it, but I am not familiar with it.

Q. Don't you know its general terms?

A. Yes, sir.

Q. From your knowledge of the affairs of the St. Louis & Keokuk Railroad Company and the St. Louis, Hannibal & Keokuk Railroad Company, I will ask you whether you know what the $19,662.75 indebtedness referred to in this contract is, and what it includes. First, do you know what it does include, from your knowledge of the company?

A. It refers to the——

Q. Do you know?

A. I do; yes.

Q. Have you reference to this account? Does it or does it not include that account audited on page 93?

372 A. It refers to a settlement and auditing of the accounts made on the 22d of Sept., 1870.

Q. Does it or not refer to these accounts audited on page 93 of the records of the St. Louis & Keokuk Railroad Company?

A. It does specifically.

Q. From your knowledge of the affairs of those two companies was there any other indebtedness of nineteen thousand dollars, more or less, except this one that appears on page 93 of the records of the old company?

A. There was no indebtedness up to the time that was made.

Q. Will you please pay attention to my question? From your knowledge of the affairs of these two companies was there any other indebtedness of either of the companies amounting to $19,000 or thereabouts excepting the indebtedness audited on the 22nd of September, 1870, and appearing on page 93 of the book of the old company?

A. My answer is that these accounts were made up to the 4th of May and all this indebtedness accrued at the 4th of May, 1870, when the se——

373 Q. That is not my question, Mr. Fogg. (Question read.)

A. There was not.

Counsel for trustee here objects specifically to the entire testimony given by Mr. Josiah Fogg, to each and every question in said testimony, and notifies counsel for Mr. Fogg and the master that he will move to strike out all of said testimony, and that he will further move that none of the costs of said testimony shall be taxed as costs upon this answer of the cross-bill.

Cross-examination waived.

Signature waived.

At this point an adjournment was had until 2 p. m.

374 2 P. M.

Parties met pursuant to adjournment.
Present: As before.

Testimony of S. R. Wolfolk.

S. R. WOLFOLK, being duly sworn, testified as follows:

Direct examination by Mr. REYNOLDS:

Q. What is your name and residence?
A. S. R. Wolfolk; Troy, Lincoln county, Missouri.
Q. Are you the same Mr. Wolfolk who was connected with the St. Louis & Keokuk Railroad Company and afterwards the St. Louis, Hannibal & Keokuk Railroad Company?
A. Yes, sir.
Q. I will ask you whether the persons of similar names who appear as stockholders and directors in the books and records of those two companies, where their names are similar, if they are the same persons—as, for instance, — the St. Louis & Keokuk railroad I find S. J. Reynolds and George Greene and W. W. Walker as directors and officers in the St. Louis & Keokuk Company and I find the same names as directors and officers of the St. Louis, Hannibal & Keokuk Company. When that occurs are they the same persons?
A. Yes, sir.

375 Q. How long were you connected with the two companies mentioned?

A. I think, sir, I was director in 1869; I think, sir; I don't remember; I think it was in '69 or '70.
Q. Been a director ever since?
A. I have been a director; yes, sir; but there has been a receiver appointed. I don't know whether I would be considered a director now or not.
Q. But you were a director down to the time of the appointment of a receiver?
A. Yes, sir.
Q. There has been no election since that you know of?
A. No, sir.
Q. Mr. Woolfolk, I will show you the record book of the St. Louis & Keokuk Railroad Company and direct your attention to page 91, and from then on, and ask you if you remember being present at that meeting.
Mr. CARR: That is the Planters' House meeting of Sept. 22d, 1870.

Objected to by counsel for trustee, as the meetings of the directors of the St. Louis & Keokuk Railroad Company can have no possible connection with this case.

376 The MASTER: If there is no relevancy shown in the end it will be ruled out.

A. Yes, sir; I was at that meeting.
Q. You were present at that meeting?

A. Yes, sir.
Q. And you were a director at the time the meeting was held?
A. Yes, sir.
Q. Do you remember the fact of the accounts mentioned on page 93 and here, amounting altogether to the sum of over nineteen thousand dollars, being audited at that time?
A. Yes, sir.
Q. Were you a director when the contract was made between the St. Louis & Keokuk Railroad Company and the Missouri & Iowa Railway Construction Company, in 1872?
A. Yes, sir.
Q. Do you remember who were composing that Missouri & Iowa Railway Construction Company when it took the contract first with the St. Louis & Keokuk Railroad Company?
A. No, sir; I don't remember all the names.
Q. Do you remember any of them?
A. Yes, sir.
Q. Who do you remember as having been interested or connected with the Missouri & Iowa Railway Construction Company
377 who were also in the St. Louis & Keokuk Railroad Company?
A. There was Mr. Perkins.
Q. Walton Perkins?
A. Yes, sir; Dr. D. T. Waddy and myself, S. R. Wolfolk. I believe those are the only three that I know of that were in the old company and took part in the Missouri & Iowa Rail way Construction Company.
Q. Well, who were in the Missouri & Iowa Railway Construction Company that subsequently became officers and directors in the St. Louis & Keokuk Railroad Company?

Counsel for trustee objects. Objection overruled.

A. George Douglas—George Green, I think, was one of them—John F. Ely, W. W. Walker, S. P. Wisner, and Wm. Green are all that I remember of.
Q. Yourself?
A. Yes, sir.
Q. Walton Perkins?
A. Yes, sir.
Q. S. P. Wisner?
A. Yes, sir.
Q. Jos. D. Pitt?
A. I don't know that he was.
Q. Dr. S. J. Reynolds?
A. Not that I remember of.
Q. Nathan S. Dimmitt?
A. I don't think he was. I don't know.
Q. Wilson B. Elliott?
A. I think not.
378 Q. John W. Barrett?
A. I couldn't tell.
Q. George Green?

A. Yes, sir.
Q. George Douglas?
A. Yes, sir.
Q. John F. Ely?
A. Yes, sir.
Q. Samuel P. Wisner?
A. Yes, sir.
Q. W. W. Walker?
A. Yes, sir.
Q. Those were all also directors in the St. Louis & Keokuk Railroad Company?
A. No, sir; I think not all of them.
Q. I have just read from the minutes of——
A. Did you read Wm. Green?
Q. Yes, sir; at that time, the first time.
A. I don't remember that. Mr. Wm. Green was a director, but I don't think George Green.

Counsel for trustee objects. Objection overruled and exception saved.

Q. Then all the names that I read you were also directors in the St. Louis & Keokuk railroad?
A. Yes, sir.
Q. Do you remember whether prior to the making of the contract of the 12th of April, 1872, between the St. Louis & Keokuk Railroad Company and the Missouri & Iowa Railway Construction Company the persons who composed the Missouri & Iowa Railway Construction Company made any examination of the books and
379 affairs of the St. Louis & Keokuk Railroad Company?

Counsel for trustee objects. Objection overruled and exception saved.

A. Some of the members who composed that Missouri & Iowa Railway Construction Company examined them. I can't say that all of them did.
Q. Did the persons who made the examination claim to be a committee of that construction company in making the examination or to be acting for them and making it in behalf of them?
A. Well, sir, my recollection about it is this: That myself, Dr. Waddy, and J. W. Barrett, who was the engineer of the road, went to Cedar Rapids and carried the books, and we met Mr. W. W. Walker and Mr. Douglass, S. P. Wisner, and I think John F. Ely was present, and we told them what we wanted and our condition. We had a road down here that we wanted built and told them what amount of assets we had, and we had a statement made from the books showing the amount of assets and the amount of the
380 indebtedness, building the road, &c., and wanted them to take hold of the road and build it. They were recommended to us by J. W. Barrett, who was our engineer, who was acquainted with them, and then after that—I don't remember what time, how long afterwards; not very long ago—some of them came down and

examined the books and the assets we had, and finally we made a contract with them to finish the road.

Q. Was this book, the records of the St. Louis & Keokuk Railroad Company, which is filed in this case as Exhibit No. 1, one of the books that was submitted to the inspection of those gentlemen at that time?

A. Well, I couldn't say positively. My best judgement is that it was. I couldn't say positively now.

Q. Will you please look at that book and see whether you can say positively that that is the original record book of your company?

A. Yes, sir; this is one of the original books, sir.

Q. And was among the records of the company at that time, was it?

A. Yes, sir.

381 Q. Has always been, as far as you know?

A. As far as I know it has been since. The secretary would know more about that than I do.

Q. Well, you have seen it frequently as a director?

A. Oh, yes.

Q. Now, Mr. Wolfolk, the contract between the Missouri & Iowa Railway Construction Company and the St. Louis & Keokuk Railroad Company was dated the 12th of April, 1872. You remember the fact, do you, that on the 4th of March, 1873, the St. Louis & Keokuk Railroad Company made an assignment to the St. Louis, Hannibal & Keokuk Railroad Company of its properties, &c., do you?

A. I remember of them making an assignment, sir; I don't remember the date.

The MASTER: You have the original there, have you not? Let him refresh his memory.

Exhibit No. 4 shown to the witness.

Q. I will ask you if that is not the contract.

A. Yes, sir.

Q. What is the date of that?

A. The 4th day of March, 1873.

Q. Now, after the making of that contract between the two railroads the Iowa Railway Construction Company continued in

382 the work of construction, did they?

A. You mean the Missouri and Iowa Railway Construction Company?

Q. Yes.

A. Yes, sir; they continued.

Q. Under a contract made directly with them and the new company?

A. That was my understanding, sir.

Q. Substantially the same contract that had been in existence before with the old company?

A. Yes, sir.

Q. Change of names only?

A. Yes, sir.

Q. Now, sir, can you state what was done with this record book, Exhibit 1, into whose custody it came after the transfer from one company to the other?

Counsel for trustee objects as being entirely immaterial.

A. My recollection is that they continued the same secretary; I think so.

Q. Would that transfer take also all the books and records and everything that the old company had into the new organization?

A. That is my recollection.

Q. And they had the same office?

383 A. I think Mr. McLellen was secretary of the St. Louis & Keokuk and also of the St. Louis, Hannibal and Keokuk. I cannot recollect exactly about the records. I will say that I have not seen the records for a year. It is my recollection that Mr. —— was secretary of the company.

Q. Was there ever any trouble or question that you know of about the stockholders of either company having access to these records and books?

Counsel for trustee objects, as immaterial.

A. Not that I know of.

Q. They were always at the company's office, as far as you know?

A. As far as I know; yes, sir.

Q. Mr. Wolfalk, do you know Mr. John I. Blair?

A. Yes, sir; I have met him several times.

Q. You were a director of the company still in 1881, were you?

A. Yes, sir.

Q. You were continuously a director from the time you were first elected until now, I believe you stated a while ago.

A. Until a receiver was appointed, sir. I can't be a director now, of course.

Mr. CARR: That doesn't put you out of office.

384 Q. It takes the control of your property from you is all; it still continues you in office. I will show you this book, Exhibit 2, purporting to be the records of the St. Louis, Hannibal & Keokuk Railroad Company, and ask you if you recognize that as the record books of the St. Louis, Hannibal & Keokuk Railroad Company?

A. Yes, sir.

Q. I find, commencing on page 186 of that book, the minutes of a stockholders' meeting, held the 16th of March, 1881, at which directors were elected and other business transacted. Do you remember of being at that meeting?

A. I don't think I was at that meeting, sir; my recollection is that I was not; may have been, but I don't think that I was, sir.

Q. Well, on page 189 of this book there is copied here a contract between John I. Blair and Moses Taylor, of the one part, and the St. Louis, Hannibal & Keokuk Railroad Company, of the other part, the general effect of which is the contract for the completion of the

road, filed the 3rd of December, 1882, from the south line
385 of Pike county, in Missouri, to some point on the Wabash, St. Louis & Pacific, at the town of Wentzville or the town of Peruque or some point on said railroad between the said towns, being 38 miles of main track and 2 miles of siding. Do you remember the fact of such contract having been made?

Counsel for trustee objects to such testimony, being wholly irrelevant.

The MASTER: He can state whether he remembers the fact of such contract having been made.

Counsel for trustee excepts.

A. My recollection about it is this, that Mr. Walker had an article—I presume it was a contract—written by which he had made an agreement between Mr. Blair and Mr. Taylor, but the contract was not signed at the time. I think he read it before the board and the board authorized him, my recollection is, and Mr. — Dr. Ely, who were the executive committee, to close the contract.

Q. I am asking you if you remember the fact that such a contract was entered into?

386 A. Yes, sir; that contract was made after that.

Q. Mr. CASE: The contract was made after that?

A. I think so, sir. That is, I don't think the contract was signed until after that time. I don't remember the date.

Q. The contract of that kind was presented and the stockholders authorized its execution?

A. Yes, sir.

Q. And you know as a fact that it was afterwards done?

A. Afterwards done.

Q. Do you know whether, as a matter of fact, Blair and Taylor commenced work under that contract and went on building the road?

Counsel for trustee objects to such testimony, being entirely irrelevant and immaterial. Objection overruled and exceptions saved.

A. I do not, sir.

Q. You know nothing at all about work being done on the road after that?

A. Yes, sir. I don't know that Mr. Blair and Mr. Taylor executed the work.

Q. Do you know who did do it?

A. It was done under the instruction of W. W. Walker.

387 —. You don't know who the contractors were?

A. Sir?

A. You don't know who the contractors were?

A. I don't know any more than——

Q. Mr. Walker was the superintendent then?

A. And president of the road; yes, sir, and my understanding was that Mr. Blair and Mr. Taylor furnished the money and Mr. Walker

had the work executed, but I didn't know that Mr. Blair and Mr. Taylor were the contractors.

Q. This contract that I have reference to, of date the 24th of February, 1881, was a contract for furnishing the means for completing the work? That is what it was, as I understand it.

A. That was my understanding, sir.

Q. That is the way you understood it?

A. Yes, sir.

Q. The point I want to get at is whether you knew that under that contract they had furnished means with which work was done there.

A. I don't know of my own knowledge, except what I heard Mr. Walker say.

388 Mr. CASE: That is all you can swear to—your own knowledge.

Q. What did you understand, as an officer of the road, about that matter?

Objected to. Objection overruled. Exception taken.

A. I understood from Mr. Walker that Mr. John I. Blair was to furnish him money to build the road and buy some equipments for them, and, though I never heard him say, still I suppose that is where the money came from.

The MASTER: Well, never mind——

WITNESS: I don't know that, sir; as I said awhile ago, I couldn't say.

Q. You know of no other contract that the company had except this?

Mr. CASE: He don't know that that contract is made yet.

Q. Do you know of any other persons than Blair and Taylor from whom the company was obtaining money for the construction of the road? Do you know?

A. No, sir.

Q. The company had none of its own?

A. I don't know whether they had or not, sir.

Q. Except surrendered from the sale of bonds?

389 A. I don't know whether they had or not, sir. I don't know what the road was making at the upper end of it—whether it was making any more than paid the hands or not. I don't know that; I couldn't say.

Q. Did you understand and did you know, as an officer of the road, whether or not they were making more than operating expenses with the upper portion of the road?

A. I did not know, sir, that they were.

Q. How much of the road had been constructed, Mr. Wolfalk, of this 38 miles called for in this contract before the 24th of February, 1881?

A. I think the road is about 70 miles long, sir. That would leave 32 miles, I believe.

Q. That would leave 33 miles, wouldn't it?

The MASTER: What are you asking now; about the balance of the road?

Mr. REYNOLDS: How much had been constructed prior to the making of this 38-mile contract?

WITNESS: That would be 33 miles.

Counsel for trustee makes same objection as before.

390 Mr. CARR: You may as well be exact about it. It is 81¾ miles from the fair grounds down to Gilmour.

WITNESS: I thought it was only 70.

Mr. CARR: Take 38 from that and you get the exact distance?

A. Yes, sir.

Q. How long prior to this 24th of February, 1881, had the upper portion of the road-bed been constructed?

Counsel for trustee objects to such testimony as being immaterial. Objection overruled, and exception saved.

A. I don't remember; I couldn't say.

Q. Well, can't you give some approximate idea?

A. February, 1881?

Q. Yes. Maybe I can aid you by taking it by pieces.

A. I don't know that you can, for I remember very little about that upper part of the road—when it was built.

Q. Do you remember when that part of it, the 18 miles, that runs from the fair grounds at Hannibal to Frankfort, in Pike county, was completed?

A. No, sir; I do not.

Q. Sir?

A. No, sir.

Q. Do you remember whether it was completed before or after the transfer from the old company to the new company?

391 A. No, sir; I couldn't say. The only point on that road that I remember when it was completed was when it got to Troy.

Q. When was that?

A. That was three years ago last December.

(Mr. CARR):

Q. That would be December, 1881? Q. That was built, then, under this contract, was it? That was part of the 38 miles referred to in this contract of Feb. 24th, 1881?

A. Yes, sir.

The MASTER: Have you not proved the construction of that former portion of it by Mr. Fogg?

Mr. REYNOLDS: I proved the 18 miles, but there is a gap of 23¾ miles that I have not proved when it was done.

Q. Do you know of Mr. John I. Blair being a stockholder in the St. Louis, Hannibal & Keokuk Railroad Company?

Objected to. Objection overruled and exception saved.

A. I don't remember whether he was a stockholder or not.

Q. Do you know of Mr. De Witt C. Blair being a stockholder?

Objected to. Objection overruled and exception taken.

392 A. I think, sir, that Mr. De Witt C. Blair had some stock in it, sir. The records will show that, I should think.

The MASTER: If we had the record.

Mr. REYNOLDS: We have; one of the records introduced yesterday shows his election as a director.

Mr. CARR: He has to be a stockholder to be a director.

The MASTER: He might be elected a director and yet not be qualified.

Q. You say that you think he was a stockholder?

A. I think he had some stock.

Q. Do you remember whether grading had been done on the line of this road through Lincoln county before the transfer from the old to the new company?

Objected to as immaterial. Objection overruled and exception saved.

A. Yes, sir; there had been some grading done.

Q. By whom?

A. Woolf and Carpenter did some, sir.

Q. Contractors under the old company?

A. Yes, sir.

Q. Do you remember the value of it?

A. I do not, sir.

Q. Or do you know the value of it?

393 A. No, sir.

Q. Do you know the number of miles of it?

A. No, sir.

Q. Do you know how many miles were graded?

A. Well, no, sir; I do not. There was grading done along at different places, very little of it finished.

Q. And how about bridging? Was there any bridging done in Lincoln county prior to that time of the transfer from the one company to the other?

A. No, sir; there was some piling driven, I think, but I don't think there were any bridges made.

Q. Any culverts set?

A. Some culverts put in, I think, but that was not done by Woolf & Carpenter; that was done by the county. I think it made some contracts for some grading under the superintendence of the engineer, Mr. Barret, afterwards when Carpenter broke down.

Q. Lincoln county did some of that itself?

A. Yes, sir.

Q. I understand you to say that you don't know anything about the work that was done up in Ralls county.

A. No, sir; I do not.

394 Q. Now I will ask you whether you don't remember as a fact that 18 miles of the road, extending from the fair grounds at Hannibal to Frankfort, in Pike county, had been completed and all ready for the cars prior to the transfer of the old company to the new company?

A. No, sir; I don't remember at all, sir. I knew very little about the work in Ralls county.

Q. You were in as a representative?

A. Of Lincoln county; yes, sir. Ralls county had her representatives and Pike had hers, and it was as much as the members could do to keep their own county straight without going outside.

Q. They paid very little attention to matters outside their own counties?

A. Yes, sir.

Q. Where were you living then, sir?

A. Living in Troy.

Q. Lincoln county?

A. Lincoln county; been living in Lincoln county fifty years.

Q. I don't believe you have stated if you know when the road was completed to Gilmore on the Wabash road.

395 A. No, sir; I do not. I think it was the year following—that is, the summer after it reached Troy. I think they intended to run over the road by a certain day in May, but I don't think they run any train there until some time a month or two afterwards.

Mr. CARR: You mean May, 1882?

A. Yes, sir; 1882.

Q. That 38 miles was to be finished Dec. 31st, 1881?

A. I think so.

Q. But that wasn't done?

A. That wasn't done. They only got to Troy in that winter.

Q. And then in the following——

A. In the follwing summer they finished to Gilmore, I think; that is my recollection.

Q. That is the station that now connects with the Wabash, St. Louis & Pacific or the old North Missouri?

A. The old North Missouri.

Mr. REYNOLDS (to Mr. Case): There is no question about the Wabash, St. Louis & Pacific railway being the old North Missouri.

Mr. CASE: I don't see how the Wabash is in this case.

Mr. REYNOLDS: It is a simple matter of identification.

396 Mr. CASE: The original bill in this case says where the road runs.

Mr. REYNOLDS: Yes; that the charter and all the papers in it calls for the completion to the old North Missouri railroad.

Mr. CASE: No question about that.

Mr. REYNOLDS: And the North Missouri railroad's name has

been changed and is now known as the Wabash. We all know that.

Mr. CASE: Yes.

Cross-examination by Mr. CASE for trustee:

Q. You don't know of your own knowledge that any contract was ever entered into between the Hannibal & Keokuk Railroad Company and Mr. Blair and Mr. Taylor? Of your own personal knowledge, I mean.

A. Well, no, sir; not of my own knowledge.

Q. You never saw any contracts signed by those gentlemen, did you?

A. I never saw them sign a contract; no, sir.

Q. You never saw them disburse any moneys to this company, did you?

A. No, sir.

Q. You never saw them build any of the railroad of this company, did you?

A. No, sir.

397 Q. Or any men that you knew were their representatives—actually knew were their representatives?

A. No, sir.

Q. You don't know of your own knowledge that Blair was a stockholder of this railroad, do you?

A. No, sir.

Q. You don't know of your own knowledge that Taylor was a stockholder of this railroad, do you?

A. No, sir.

Q. Then all you have been testifying to here in this matter has been based upon what you heard, to a great extent, and upon your hearsay testimony, has it?

Counsel for Josiah Fogg objects.

A. Not altogether.

Q. Except in regard to the construction of certain portions of the road having been built at certain times?

Objected to as leading, as the witness testified on other matters. Objection overruled.

Q. All you have been testifying here upon your direct examination, except that part which relates to the building of certain
398 portions of the railroad, is based entirely upon information from other parties?

A. No, sir.

Q. Well, wherein is it not?

A. I testified here to——

Q. Something that you personally know, I mean?

A. To being a stockholder.

Q. You being a stockholder?

A. Yes; and other parties being stockholders, and to meetings.

The MASTER:

A. Record books?

A. Record books and the railroad meetings.

Q. But so far as your testimony relates to anything that concerns De Wit C. Blair or John I. Blair or Moses Taylor, that is based entirely upon testimony of other people; is that true?

A. Well, as I stated before, in reference to that contract that was signed, I didn't see Mr. John I. Blair.

Q. Do you know that it was ever signed by them? You testified that that contract was offered by Mr. Walker to the directors of the company?

A. Yes, sir.

Q. And the company authorized him to make the contract?

A. The directors of the company authorized Mr. Walker to execute it, to make the contract with Mr. Blair and let him sign
399 it, and they reported afterwards.

Q. You don't know of your personal knowledge that that contract was ever signed?

A. By Mr. Blair?

Q. Or Mr. Taylor?

A. I didn't see it.

Q. You don't know of your own personal knowledge?

A. Well, I don't know exactly what you mean by personal knowledge.

Q. I mean if Mr. Walker told you anything that is not personal knowledge.

A. Mr. Walker didn't tell me; he told the board.

Q. I mean what you yourself saw.

A. Of course, I didn't see him sign it.

Q. And you don't know personally that the contract ever was?

A. No, sir.

Q. And of your personal knowledge they never disbursed one dollar towards the building of that railroad?

A. No, sir; I never saw them pay any money over.

Redirect examination by Mr. REYNOLDS for Josiah Fogg:

Q. The whole matter was discussed in the board meeting, was it not?

A. Yes, sir.

Q. And these are the records of that meeting that you
400 have identified—Exhibit —?

A. Yes, sir.

Q. And they set out the contract purporting to be signed by these parties, upon which the company acted?

Mr. CASE: He said that was the contract which the company offered to sign.

Mr. REYNOLDS: This is the company's own record.

Counsel for trustee objects to each and every question and answer of the said witness, and hereby notifies the attorneys for Josiah

Fogg that he shall make motion before the court or the master to strike out all of said testimony and tax the costs thereof against Mr. Fogg.

The master allows Mr. Wolfalk $9.50 + $1.50 *per diem* as attendance for witness in this case.

At this point an adjournment was had until Saturday noon.

401 SATURDAY, *June* 13, 1885.

Parties met pursuant to adjournment, and, there being no witnesses present, an adjournment was had until Monday, June 15th, at 2 p. m.

MONDAY, *June* 15*th.*

Parties met pursuant to adjournment, and, there being no witnesses present, an adjournment was had until Wednesday, June 17th.

WEDNESDAY, *June* 17*th.*

The master was present, but none of the parties appeared, and the master adjourned the further hearing of the cause until Friday, June 19th, at 12 m.

THURSDAY, *June* 18*th.*

Parties met by consent.

Present: Theodore Case, Esq., for the trustee; James Carr, Esq., for Josiah Fogg.

Testimony of Dr. S. J. Reynolds.

Dr. S. J. REYNOLDS, being duly sworn, testified as follows:

Direct examination by Mr. CARR:

Q. Dr. Reynolds, please state if you ever were a director in the St. Louis & Keokuk Railroad Company. If so, state when you
402 became a director therein, and how long you continued as such.

A. Yes, sir; September 22nd, 1870, up to the present time. I am still a director.

Q. State whether you were present at a meeting of the board of directors of the St. Louis & Keokuk Railroad Company on the 22nd of September, 1870, at the Planters' House, in the city of St. Louis.

A. I was.

Q. State whether the claims against said company were audited by the board of directors at that meeting.

Objected to as irrelevant and immaterial. Objection overruled and exception taken.

A. Yes, sir; that was my understanding at that time.

Q. Look at this book now here shown you, and state whether that book contains the proceedings of the board of directors of the company.

A. To my best recollection, it does.

Q. State whether the claims mentioned on page 93 were audited and allowed by the directors at that meeting.

A. That is my recollection of it.

403 Q. Are there any claims audited and allowed in the list there in favor of Mr. Josiah Fogg?

A. Yes, sir.

Q. State what they are.

A. $8,607.75.

Q. And the second?

A. $940.

Q. Were all the other claims mentioned there allowed by the directors on that occasion?

A. That is my recollection.

Q. State if you were one of the incorporators of the St. Louis, Hannibal & Keokuk Railroad Company.

A. I was.

Q. State whether you were a director in that company, and, if so, when you became a director, and how long you continued as such therein.

A. I became a director upon its organization. I have been in it ever since.

Q. Do you remember when?

A. I do not know that I could fix the date exactly.

Q. Is the book here shown you (handing book to witness) a record of the proceedings of the St. Louis, Hannibal & Keokuk Railroad Company and its directors?

A. I suppose so; I don't know positively about that.

Q. Look at it and see if you identify the book?

404 A. I identify the name there.

The MASTER: You can look inside of it and see what it contains.

A. If you can direct me to the organization I can tell you.

Q. This is the book. It gives your name as one of the incorporators.

A. Yes, sir; that is correct, sir.

Q. Before Cyrus W. Williams, notary public?

A. Yes, sir.

Q. You remember of acknowledging the articles of association before him?

A. Yes, sir.

Q. Were you present as one of the directors at the meeting held May 24th, 1871, at Bowling Green, Pike county, Missouri, when the proceedings of the board of directors of the St. Louis & Keokuk Railroad Company were that the contract of John S. Woolf was declared forfeited?

A. Was that at Bowling Green?

Q. It is marked so there—Bowling Green, Pike county, Missouri.

A. I suppose I was. That would be my recollection about it. It has been a good while ago, but then I was at almost all—in fact, all—of the meetings.

Q. Do you remember anything in reference to the board of
405 directors declaring that contract forfeited at that meeting?

A. I don't know that I can say that I can recollect distinctly about it.

Q. Do you remember about the contract of Woolf being declared forfeited at any time by the board of directors?

A. Yes, sir; it was declared so.

Q. Do you remember about the St. Louis & Keokuk Railroad Company, after the forfeiture of the Woolf contract had been declared, entering into a contract with the Missouri & Iowa Railway Construction Company to complete the St. Louis & Keokuk railroad?

A. Yes, sir.

Q. Do you remember what year that was entered into?

A. No; I do not.

Q. Were you a member of the Missouri & Iowa Railway Construction Company?

A. No, sir.

Q. The books containing the proceedings of the St. Louis & Keokuk Railroad Company held on March 4th, 1873, at the Planters' House, in Hannibal, shows that you were present, Doctor?

406 A. Yes. sir.

Q. Now, they show the following resolution as adopted at that meeting:

"On motion of S. P. Wisner and seconded by N. S. Dimmitt, the following resolution was unanimously adopted, to wit:

"Resolved, That the contract and deed of the sale now here submitted to this meeting, dated March 4th, 1873, by which the St. Louis and Keokuk Railroad Company has granted, bargained, sold, and conveyed all its corporate property, rights, privileges, credits, franchises, and appurtenances to the St. Louis, Hannibal & Keokuk Railroad Company be, and the same is hereby, approved, ratified, and confirmed, and the president and secretary are hereby authorized and empowered to execute said deed of conveyance and deliver the same to the said St. Louis, Hannibal & Keokuk Railroad Company."

State whether all the property of every kind, nature, and description owned by the St. Louis & Keokuk Railroad Company
407 was transferred to the St. Louis, Hannibal & Keokuk Railroad Company under that resolution and the deed therein recited.

A. That was my understanding about it.

Q. Do you know of any property of any kind that was not transferred under that deed?

A. Not to my recollection now.

Q. Was the company indebted at the time of that transfer?

A. I suppose it was.

Q. Were the debts mentioned in the report of the committee of directors at the Planters' House on the 22nd of September, 1870, paid at the time of that transfer, or any of them paid?

A. Please repeat that question.

Q. Were the debts which were audited and allowed by the board of directors at the meeting held at the Planters' House, in this city, on the 22nd day of September, 1870, paid at the time of the transfer of this property, namely, on the 4th of March, 1873?

A. Now, I do not know about that. I cannot answer that question.

Q. Do you know that any of them were paid?

408 A. I do not now recollect about that; I can't say positively.

Q. You are not prepared to state that they were paid or any of them paid at the time of the transfer?

A. No, sir; I am not prepared to do that.

(By the MASTER:)

Q. You are referring now to the debts assumed by the St. Louis, Hannibal & Keokuk Railroad Company as recited in the contract?

A. Yes, sir.

Q. At the time this meeting was held, namely, the date of March 4th, 1873, was there anything said about Mr. Fogg's debt being unpaid?

Objected to. Objection overruled and exception taken.

A. I cannot say that his debt was specially mentioned; I couldn't say that.

Q. Was it spoken of in connection with the other debts embraced in the settlement of September 22, 1870?

A. Well, my understanding was that those debts were under consideration, but about being specified or anything of the kind

409 I don't now recollect; I can't say.

Q. Well, were these debts talked about by the board of directors as being unpaid?

A. That is my understanding—that they were.

Q. That they were not paid?

A. Yes, sir; that is my understanding.

Q. You knew about those debts at the time of the transfer, did you?

A. Yes, sir.

Q. I believe you have stated you were present at the time they were audited and allowed by the old company?

A. Yes, sir; I was there.

Q. And you have no knowledge that any of them had been paid at the time of the transfer?

A. Not positively, though there were probably some of them paid, but whether they were paid before or after I cannot say. Judge Dimmitt received his. It was paid, or part of it, at least—some of it.

Q. Do you remember of any of the others having been paid?

A. No, sir.

Q. When the new corporation was organized—that is, the

410 St. Louis, Hannibal & Keokuk Railroad Company—did it pay anything for the property transferred to it by the old

corporation, namely, the St. Louis & Keokuk Railroad Company?

A. Did they pay?

Q. Pay any money or any property of any kind for the property transferred to it?

A. Well, I can't answer that question.

Q. Well, do you know?

A. I don't know of any.

Q. Any money or property being paid?

A. Of any money passing.

Q. Do you know of any property passing or any other valuable consideration?

A. On the part of the Hannibal & Keokuk?

Q. The new corporation to the old one for the property transferred by the old one to the new one.

A. No; I do not.

Q. You don't know of any money or property being paid or transferred?

A. No; I do not.

Q. Did the stockholders in the new corporation ever pay anything for their stock?

Objected to; objection overruled; exception saved.

Q. I can say as far as myself is concerned.

Q. State what you yourself paid.

411 A. I paid——

Q. You paid for the stock in the old corporation or for the stock in the new corporation. How much did you pay?

A. Well, I paid in the new corporation. I had ten shares; I paid ten shares.

Q. You had some stock in the old corporation, Dr., did you not?

A. I don't know whether I did or not.

Q. You couldn't be a director without.

A. I suppose I represented the county.

Q. Please state whether you knew of the new corporation ever paying any money to the old corporation for the property transferred to it.

A. No, sir; I cannot say that I do.

Q. Do you know of the new corporation ever paying any property to the old corporation for the property transferred to it by the old corporation?

A. I cannot say that I do.

Q. Please state whether any part of the St. Louis & Keokuk railroad was completed at the time the property was transferred by it to the St. Louis, Hannibal & Keokuk Railroad Company.

412 A. I don't know that I can say positively that it was—that there was any of it completed.

Q. Well, state your best recollection in regard to whether any of the railroad was completed or not; and, if so, how much was completed. In other words, from what point to what point was it completed?

A. Now, there was a good deal of work done; but whether it was

completed—any part of it completed—at the time this transfer was made I don't recollect, really.

Q. Please state what work was done, and where it was done.

A. There was work done in Lincoln county and work done in Ralls county, and I think some in Pike county. I wouldn't be certain about Pike county, but I know there was in Ralls county.

Q. State to what extent the work was done in each county.

A. Well, I can't do that, because I didn't go over the work, and therefore I could not give it. I never was over the work until I was a member of the board of directors under the reorganization; had several meetings in Ralls county and had some in Hannibal,
413 and then passed over the work; but before that I never had been over it at all.

The MASTER: That was while you were a member of the new board, the new company?

A. Yes, sir.

(By the MASTER:)

Q. Was that after the transfer or before it that you passed over the road?

A. I can't say positively now about that, because I was a member of the board a good long while, and the thing changed around, and it would be difficult for me to fix the exact time; but there was a good deal of work done when I became a member of the board in Ralls county, and, if I am not mistaken about it, there was either surveying going on or there had been some work done in Lincoln county.

Q. You mean when you became a member of the board?

A. When I first became a member of the board.

Q. That was on the 22d of September, 1870?

A. I won't be certain about it. The surveys may have been just preliminary surveys, locating the road. That may have
414 been all that was done. I would not be certain about that, but, after being made a member of the board, I passed over it frequently; but as to dates and time of my passing over it I cannot recollect about that.

Q. The record shows that you were at the meeting at Hannibal on the 4th of March, 1873?

A. Yes, sir.

Q. Now, in passing from where you lived, at Bowling Green, in Pike county, to Hannibal, in Marion county, did you pass over the railroad on that occasion?

A. I recollect. I think that we went from Bowling Green on the hand car to Frankfort and there took the cars and went over to Hannibal, if I recollect aright; but I won't be certain about that. We either did that or went through in a buggy; I don't know which. I cannot say positively about that.

Q. Were the cars running from Frankfort, in Pike county, to Hannibal, in Marion county, at the time of that meeting?

A. I cannot say positively whether they were running at
415 that time or whether it was at a future time. I recollect that

I went over the road once, or rather drove down to Hannibal to a meeting. That might have been the first meeting, but I cannot say. I drove in my buggy from Bowling Green to Hannibal; went by way of New London and on down to Hannibal. That was the first.

Q. What do you mean by the first meeting—the meeting that was held at Hannibal after you became a director?

A. After I became a director.

Q. In the old company, do you mean?

A. No; I suppose I was in the new company. I don't know about that.

Q. Please give us your best recollection in regard to whether the St. Louis & Keokuk railroad was in running condition or in a condition to run cars on it on or prior to the 4th of March, 1873, from Frankfort, in Pike county, to Hannibal, in Marion.

A. I cannot do that.

Q. Was De Witt C. Blair a director and stockholder in the new corporation?

A. Well, now, I don't recollect about that, really.

416 The MASTER: State of your own knowledge.

WITNESS: I do not recollect about it; may have been and may not. I cannot say positively.

Cross-examination waived.

Counsel for trustee objects to all this testimony, and shall move to strike it out on the bearing before the master.

Signature waived.

At this point an adjournment was had until Monday next at one o'clock.

The master allows the above witness $11.00 as attendance in this case.

MONDAY, *June* 22, 1885—one p. m.

Parties met pursuant to adjournment.

Present. James Carr, for Josiah Fogg, and Theodore G. Case, for the trustee.

The taking of testimony in the cause was resumed as follows:

Mr. CARR: We offer in evidence the report of the committee appointed to examine the late treasurer E. N. Bonfill's accounts, on May 6, 1872, which report is to be found commencing on

417 page 218 and terminating on page 219 of the book containing the proceedings of the St. Louis and Keokuk Railroad Company.

(Mr. CARR:) Now, we will offer the testimony taken in the case of Josiah Fogg, complainant, against The St. Louis, Hannibal and Keokuk Railroad Company and St. Louis and Keokuk Railroad Company, on file in the office of the clerk of the circuit court of the United States within and for the eastern district of Missouri.

Counsel for the trustee objects, because the record in that case is immaterial, and because the parties to that record are not the par-

ties to this answer and cross-bill of Josiah Fogg, and because the trustee had no opportunity to cross-examine any of the witnesses in said case, and neither he nor the bondholders were interested in the said case, nor had any notice of said case.

The master sustained the objection; to which ruling counsel for Josiah Fogg excepted.

Mr. CARR: We will offer the order of the court made in
418 that case authorizing the receiver in this suit to appear and defend the suit.

Counsel for the trustee makes the same objection as last heretofore stated, and also as irrelevant.

The master overruled the objection; to which ruling counsel for the trustee excepted.

The MASTER: As I understand the case the order is already on record herein.

419 PLANTERS' HOUSE, HANNIBAL, *March 4th*, 1873.

The board of directors met at the Planters' House, Hannibal, Mo., on March 4, 1873, at 2 o'clock p. m. pursuant to adjournment of February 26, 1873.

Present: S. R. Woolfolk, D. T. Waddy, W. Perkins, W. W. Walker, W. B. Elliott, S. J. Reynolds, S. P. Wisner, J. D. Pitt, and J. W. Barrett.

The committee appointed to examine the late treasurer's (E. N. Bonfil's) accounts on May 6th, 1872, presented the following report in words and figures as follows, viz:

The committee appointed by the board of directors of the St. Louis and Keokuk Railroad Company at their meeting, duly held at Troy on May 6th, 1872, to examine the accounts of the late treasurer, E. N. Bonfils, would respectfully submit the following report:

Your committee would respectfully state that the examina-
420 tion embraced the entire intromissions in Lincoln county from August 1st, 1871, to April 30, 1872, and find that vouchers had been taken for all money disbursed for work done in said county and for the time stated, to wit:

Dr.	To Lincoln county bonds			$99,500 00
Cr.	By profit and loss	$14,981 64		
	" gen'l expense	672 52		
	" legal expense	2,370 43		
	" engineering	7,088 72		
	" grading	71,405 44		
	" bridging	1,454 96		
	" ties	546 81		
	" right of way	11 70		
	" Mo. & Ia. R'y Const'n Co.	967 78		
				99,500 00

Respectfully submitted,

(Signed) S. P. WISNER,
" D. T. WADDY.
" WM. BUCHANAN.

And, on motion of W. W. Walker, seconded by W. B. Elliott, the report was accepted and the committee discharged.

421 *Order of Pike County Court Subscribing* $199,500 *in Bonds and* $500 *for a Preliminary Survey to the St. Louis and Keokuk Railroad Company.*

STATE OF MISSOURI, } ss:
County of Pike, }

November Term, 1869.

In the county court of said county, on the 3rd day of November, 1869, the following, among other, proceedings were had, viz:

In the matter of the construction of the St. Louis and Keokuk railroad from the North Missouri railroad to Keokuk, Iowa.

Whereas this court heretofore, to wit, on the 3rd day of August 1868, by its entry of record of that day, agreed to take and subscribe $150,000.00 as stock in the capital stock of the St. Louis and Keokuk Railroad Company, to be paid in the bonds of the county of Pike, as in said order recited;

And whereas said agreement has not yet been carried into effect, said stock has not been subscribed on the books of said com-
422 pany, and said bonds have not been issued; the court now hereby orders that the whole of said record entry be, and the same is hereby, revoked, rescinded, and annulled, and that this entry of record be, and the same is hereby, substituted instead and in lieu thereof. In order to facilitate the building of said reilroad, which this court believes will be of great public utility to the people of said county, the court now hereby decides and agrees to take the amount of two hundred thousand dollars as stock in the capital stock of said railroad company on behalf of the people of said county, on the following conditions, to wit:

That the whole of said stock shall be paid in the bonds of said county of Pike except $500.00, which this court has agreed to advance in payment for a preliminary survey of a part of said rail-
road and which, in the event of the subscription being made
423 by the authorized agent hereinafter named, is to become a part of said stock and to be received by said company as such with the bonds of the company hereinafter mentioned. The stock of said county in said railroad company shall consist of three hundred and ninety-nine bonds of said county, of five hundred dollars each, numbered, respectively, from 1 to 399, which, with the five hundred dollars above mentioned for said preliminary survey, will constitute the total stock of said county in said railroad company, the aforesaid sum of two hundred thousand dollars. It is expressly understood that said bonds are to be made payable at the National Bank of the State of Missouri, in Saint Louis, fifteen (15) years after date, with interest thereon at the rate of ten per cent. per annum, payable at the said national bank, in Saint Louis, by cou-

pons attached to said bonds, semi-annually—that is, on the
424 first day of January and on the first day of July in each year, respectively, as said interest may become due—and that said bonds are to be received by said railroad company at par as stock, without any discount or diminution whatever; and it is further expressly understood that said stock is only to be paid in the bonds aforesaid upon the express conditions hereinafter further stipulated—that is to say, in two instalments, as follows, to wit: The first instalment, of one hundred and forty-nine thousand five hundred dollars, to be paid in the bonds of said county, numbered from 1 to 299, when said railroad company shall have completed the work on said railroad from the northern line of said county, by the town of Frankfort, or not more than one-fourth (¼) of a mile east of the limits of said town, to the town of Bowling Green, in said county, and shall have erected a good freight and passenger depot at said
425 town of Frankfort, or at any point on said railroad not more than one-fourth (¼) of a mile east of the limits of said town, and shall have erected a good freight and passenger depot at Bowling Green, in said county, or at any point on said railroad south of said town of Bowling Green not more than one thousand (1,000) yards from the court-house, in said town of Bowling Green, and shall have completed the work on said railroad in every respect for a good railroad through said county by said town of Frankfort to said town of Bowling Green, as aforesaid, on a grade which shall not exceed eighty (80) feet to the mile on any part thereof; and when said company shall have put good rolling stock for such railroad on such grade on said railroad in running order from its point of junction on the Hannibal and St. Joseph railroad, through
426 the counties of Pike and Ralls, by or near the town of Frankfort as aforesaid, to the town of Bowling Green, in said county of Pike as aforesaid, and the cars are actually running between the points last aforesaid; and the second installment, of fifty thousand dollars, shall only be paid in said bonds of five hundred dollars ($500.00) each, numbered, respectively, from 300 to 399, inclusively, when said company shall have completed said railroad and put the cars thereon in running order from its junction with the Hannibal and Saint Joseph railroad, through Ralls and Pike counties as aforesaid, to the southern line of Pike county; that the agent of said county hereinafter named is only authorized to deliver the bonds of the said 1st installment to said company when the county engineer for said county, together with the engineer for said company, shall have received the work for said road as completed from the northern
427 line of said county to the town of Bowling Green as suitable for a good railroad, on a grade not to exceed eighty (80) feet to the mile in any place, and shall have so certified to the agent aforesaid, and the cars are actually running thereon; but in the event that they should not agree as to the character and quality of the work, then said agent is to request them to call in a third railroad engineer, of good character and qualifications, who with them shall certify as to the character and quality of the work to the agent of this court to be hereinafter named, and if they or any two of them shall certify

that said work is done in good order, and that the road is in good running order and the cars are actually running thereon, then the agent aforesaid is authorized to deliver said bonds for said 1st instalment, but if they or any two of them shall certify that
428 said road from the county line of Pike county to Bowling Green is not completed in good order for a good road of the grade aforesaid, then said agent is to withhold said bonds till said road shall be so completed and certified to him and the cars are actually running thereon. The bonds for said 2nd installment are only to be delivered by said agent when it shall have been certified to him as aforesaid that said road is completed in good order to the southern line of said county and the cars are actually running on the whole length of the road from its junction with the Hannibal and St. Joseph Railroad, by New London, Frankfort, and Bowling Green as aforesaid, to the southern line of Pike county; and it is understood that when said bonds are delivered by said agent for each of said instalments that the past-due coupons are to be cut off, cancelled, and destroyed; and for the purpose
429 of carrying into effect this agreement on the part of this court for said county, it is hereby ordered that Samuel F. Murray, of said county of Pike, be, and he is hereby, appointed the agent of said county, with full power and authority to do and perform any and every act on behalf of said county and of this court concerning the preparation of said bonds, the countersigning them on the margin thereof as the agent of the court for said county, and the delivery thereof in accordance with the terms of this order, and the subscribing of said stock on the books of said company in accordance with the conditions aforesaid, the casting of the vote of said county on said stock in said company for the election of the officers of said company, and all other acts which may be necessary to carry this agreement into effect which this court could by law do and
430 which are not inconsistent with the terms of this order; and it is ordered that when said agent, in his discretion and judgment, is satisfied that said company are able and willing in good faith to build said road in accordance with the terms mentioned herein, that he spread a copy of this order in full on the records of said company and subscribe the amount of stock herein mentioned thereunder in accordance with the conditions and stipulations herein mentioned, and to complete the same the said company must in two months thereafter signify to this court by its endorsement thereof their acceptance of this proposition; and it is ordered that all other orders and entries of record made by this court in relation to the subscribing of stock in said railroad company and the buildings of said railroad not accepted by said
431 company and not carried into effect and which are inconsistent herewith be, and the same are hereby, revoked, rescinded, and annulled, and that this record entry be, and the same is hereby, substituted therefor.

432 HANNIBAL, *May 6th*, 1878—11.30 o'clock a. m.

The newly elected board of directors met.

Present: Geo. Greene, W. W. Walker, Jno. F. Ely, S. P. Wisner, S. R. Woolfolk, S. J. Reynolds, N. S. Dimmitt, W. B. Elliott, L. P. Jackson, and Jo. McCune.

On motion of George Greene, the following resolution was adopted by a unanimous vote of the directors present, to wit:

Resolution of Directors Approving Contract, May 6, 1878, with John I. Blair, for Himself & Moses Taylor.

Resolved, That the agreement negotiated by this company with John I. Blair, for himself and Moses Taylor, of which the following is a copy:

Contract with John I. Blair, for Himself & Moses Taylor, Dated May 6, 1878.

Whereas the St. Louis, Hannibal and Keokuk Railroad Company have constructed their road from Hannibal to Bowling Green, or thereabouts, in the State of Missouri, a distance of about thirty-one miles, and are now operating the same, and have issued bonds, secured by mortgage on the same, at the rate of twenty thousand dollars per mile on main line, to the amount now outstanding of six hundred and twenty thousand dollars, and it is deemed
433 desirable to extend the road from its present terminus to Prairieville, in Pike county, Missouri, to the end that the road already in use may be made more valuable and the interests of the company and its bondholders subserved; and when so extended the said company will be entitled to receive from the county of Pike certain of its bonds, amounting to $199,500.00, face value, or thereabouts, according to the vote and agreement of said county to aid said company in the construction or extension of said railroad, and the said company is fully able to complete said road from its present terminus to Prairieville aforesaid, if they can procure the iron rails, spikes, splices, bolts, and nuts delivered at Hannibal; and John I. Blair and Moses Taylor, hereinafter named, upon certain terms and conditions, being willing to advance the necessary money, not exceeding thirty thousand dollars, by purchasing for said company the said iron rails, spikes, splices, bolts, and nuts, which it is represented by the company can be procured at the most
434 advantageous price for cash, the iron rails at Springfield, Illinois, and the bolts, spikes, splices, and nuts at St. Louis, Missouri.

And whereas the rails, spikes, and splices for the road, now in operation as aforesaid, were mainly furnished by said Blair and Taylor and there is now due for the same about $200,000.00 now unpaid and for which said Blair and Taylor hold the notes of the Missouri and Iowa Railway Construction Company, endorsed by the

said railroad company, with certain bonds as collateral security, being the bonds of said railroad company:

Now, therefore, the said St. Louis, Hannibal and Keokuk Railroad Company, party of the first part, and John I. Blair, of Blairstown, in the State of New Jersey, party of the second part, for himself and Moses Taylor, of the city of New York, in consideration of the premises and of one dollar by each party hereto to the other in hand duly paid, the receipt whereof is hereby acknowledged, do covenant, promise, and agree as follows:

I. The said party of the second part will furnish to the said party of the first part iron rails weighing fifty pounds to the lineal yard
435 or thereabouts, to the extent of seven hundred and twenty gross tons and no more, and the splices, spikes, bolts, and nuts necessary to lay said iron rails, and that the same shall be at the city of Hannibal aforesaid within ninety days from the date hereof, ready to be taken therefrom by the party of the first part at its own cost and expense, to be laid upon said extension of said line of railroad, and that the whole cost thereof to the said party of the second part, together with advances and all expenses, shall not exceed the said sum of $30,000, freight and expenses to Hannibal included, and that the party of the second part will take, accept, and receive therefor the obligations and collaterals hereinafter specified and agreed to be paid and delivered to the party of the second part by the party of the first part.

II. The party of the first part will, and contemporaneously with the execution of these presents does, execute and deliver to the party of the second part two promissory notes for fifteen thousand dollars each, payable six months after the date hereof and of said
436 notes, with interest at the rate of ten per centum per annum until due, and at the same rate thereafter for such time and so long as the same shall remain unpaid, and that the party of the first part, as security for the payment of the said notes and interest thereon, as above specified, will transfer and deliver to said party of the second part one hundred and eighty thousand dollars par value of the first-mortgage bonds of the party of the first part, giving and granting unto the said party of the second part full power and authority to sell and dispose of the said bonds and all thereof in case default shall be made in the payment of said notes or either or any part thereof, or by the party of the first part in this agreement, or on or at any time after the non-performance thereof or of any of its conditions or provisions, without notice or demand and without advertising the same or giving any notice of sale, at public or private sale or at the board of brokers in the city of New York, at the option of the party of the second part, and to receive the pro-
437 ceeds of such sale and apply the same to the payment of said notes and indebtedness, accounting to the party of the first part for the overplus, if any there shall be.

III. The party of the first part agrees that the said party of the second part shall be paid monthly, on the fifth day of each and every month, one-fifth part of the gross earnings of the whole road for the preceeding month, and such payment of such one-fifth por-

tions of said gross monthly earnings shall commence when the iron is laid and the road in operation to Prairieville, and shall continue until the said two notes and interest are fully paid and satisfied.

IV. The party of the first part agrees that the iron rails, splices, spikes, bolts, and nuts shall be and remain the property of said party of the second part until they are actually laid upon and form the track of the said extension of the said road of the party of the first part, but all freights and expenses thereon or connected
438 therewith after the same shall reach Hannibal aforesaid shall be paid and borne by the party of the first part.

V. The party of the first part hereby covenants and agrees that the said bonds shall be a first lien on said road, and that there are not now any incumbrances thereon, and that the party of the first part will not permit or suffer any incumbrances thereon which shall be a lien prior to the lien of said first-mortgage bonds, including the claims of the president, directors, general manager, and other officers and all employees of the company, and said first-mortgage bonds shall not be issued to exceed twenty thousand dollars per mile for each mile of main track — and in operation, except that the issue of the bonds hereinbefore provided or which may be necessary to issue in order to make the delivery of $180,000.00 as security on this agreement.

VI. And it — further mutually agreed that upon the completion of said extension of said railroad there shall be an account rendered by the party of the second part of all moneys expended for
439 iron rails, splices, spikes, bolts, and nuts and of all expenses incurred by him in and about said business, including counsel fees and fees to the Farmers' Loan and Trust Company for signing and delivering the said $180,000.00 of bonds and all expenses it may be necessary for him to incur in and about said business and said accounts, and the proper amount of interest to be allowed thereon shall be adjusted and said notes hereinbefore mentioned so endorsed that they shall represent the total amount of such expenditures and interest at the aforesaid rate or new notes shall be given in the place thereof for the amount found to be due on such adjustment.

VII. The party of the first part further and as collateral security for the payment of said notes and of all indebtedness of the party of the first part to said John I. Blair and Moses Taylor or either of them, now or hereafter to become due and payable, doth hereby sell, assign, and transfer to said party of the second part all the right, title, and interest of the party of the first part in and to one
440 hundred and ninety-nine thousand five hundred dollars of the bonds of the county of Pike, issued or to be issued or which may or ought hereafter to be issued, and all the right and authority of said party of the first part at any time hereafter to ask, demand, and receive the said bonds from the said county of Pike, with full power and authority from and at the expense of the party of the first part to take all the necessary proceedings and for that purpose to employ, retain, and pay counsel and other agents to bring any suit or suits and to prosecute the same to final determination in the courts of the State or of the United States to compel the issue or de-

livery of said bonds to said party of the second part, and with full power and authority to sell and dispose of the same and to pay said Blair and Taylor thereout or out of the proceeds of such sale *and* any and all sums that may be due to them or either of them and all fees and expenses connected with or in any way incurred
441 by said party of the second part in procuring the issue or delivery of or in selling, disposing of, or collecting the said bonds, sale thereof to be made either at public or private sale or at the board of brokers in New York city, at the option of the party of the second part, and without notice or demand and without advertising the same or giving any notice of sale.

VIII. The party of the first part hereby agrees to make and execute to the party of the second part hereafter any such other and further agreement and agreements as may be found necessary or requisite to carry out the intents and purposes of this agreement or any thereof and any further assignment or assignments of said Pike county bonds which may be required by said party of the second part in order to carry out the purposes and intents of this agreement in respect thereto.

In witness whereof the party hereto of the first part has caused to be affixed hereto its corporate seal by vote of its board of di-
442 rectors, duly attested and signed by its president and secretary, and the party of the second part has hereunto set his hand and seal, at the city of New York, in the county and State of New York, the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

ST. LOUIS, HANNIBAL AND KEOKUK RAILROAD COMPANY,
By S. P. WISNER, *President.*
[SEAL.] L. P. JACKSON, *Secretary.*
JOHN I. BLAIR, *For Himself & Moses Taylor.*

be, and the same is hereby, approved, and that the president and secretary be, and hereby are, authorized to execute said contract on the part of this corporation and to affix the seal of this company to said contract, and that the president and secretary be and are authorized to make and execute all the necessary notes, order, and papers for the performance of said contract on the part of the corporation and to deliver all bonds and securities on the part of the corporation.

443 *Lincoln County Subscription.*

Called meeting of the board.

At a meeting of the board of directors of the St. Louis and Keokuk Railroad Company, held, pursuant to call, at the Planters' House, in the city of St. Louis, on Thursday, March 11th, 1869, the following directors were present: Josiah Fogg, Isaac L. Garrison, James O. Broadhead, E. Hayden, J. H. Britton, Levin H. Baker, Barton Able, and James McKenzie.

The following orders of Lincoln Co. court, August and November terms, were presented and read:

"In Lincoln County Court, Mo. August Term, 1868.

Among the records of said court made at said term is the following, to wit:

Subscription of $300,000 *by Lincoln County to the St. L. & K. R. R. Co.*

The court ordered that Lincoln county subscribe three hundred thousand dollars to the capital stock of the St. Louis and Keokuk Railroad Company.

And that the bonds of the county be issued for that purpose to the amount of three hundred thousand dollars.

Said bonds to run for ten years from the date of issue at the rate of ten per cent. per annum interest, payable semi-an-
444 nually.

Said subscription is made on the condition that said road shall commence at a point on the North Missouri railroad at or near Dardenne, thence crossing the Cuivre at or near "Chain of Rocks," and thence recrossing the River Cuivre at or near Moscow, passing up the west side of the Cuivre within one-half of a mile from the court-house, in Troy, in this county, and thence northwardly, passing near Auburn or between Auburn and New Hope, by the most eligible route to the Pike county line.

And the court, for the purpose of carrying this order into effect, appoint Major A. H. Martin an agent to confer with the directors of and to secure the location of said St. Louis and Keokuk railroad, to order the bonds of the county prepared and issued, and to pay over the bonds to said company in such sums as he may think proper, and to vote as proxy for said county, and in general to do
445 and perform all such things as are necessary to be done for the interests of the county in the premises; and this appropriation of three hundred thousand dollars is made in lieu of an appropriation of one hundred thousand dollars made at the December adjournment term of this court for 1866."

A true copy from the record.

In witness whereof I, Francis C. Cake, clerk of said court,
[L. S.] have hereunto set my hand and official seal, at office, in Troy, in said Co. this 8th day of September, A. D. 1868.

FRANCIS C. CAKE, *Clerk.*

Lincoln County Subscription Amended Order.

"In Lincoln County Court, Missouri. November Term, 1868.

Among the records of said court made at said term is the following, to wit:

It is ordered that the order made at the August term, 1868, of this court subscribing three hundred thousand dollars to the capital stock of the St. Louis and Keokuk Railroad Company be

amended by inserting after the words 'at or near Moscow'
446 the following, viz: Or said road shall commence at a point on the North Missouri railroad at or near Gilmore's Spring, thence by the most practicable route within one-half of a mile of the court-house, in Troy.

A true copy from the record.

In witness whereof I, Francis C. Cake, clerk of said court,
[SEAL.] have hereunto set my hand and official seal, at office, in Troy, this 1st day of February, A. D., 1868.

FRANCIS C. CAKE, *Clerk.*

Resolution of the Directors Accepting said Subscription.

On motion of Mr. Hayden—

Resolved, That the order of the court of Lincoln county, Mo., dated August term, 1868, subscribing the sum of three hundred thousand dollars to the capital stock of the St. Louis and Keokuk Railroad Company, and the additional orders of said county court, dated November term, 1868, with the conditions and stipulations thereof, be accepted by this company, and that the same be spread upon its records, and that a certified copy of this resolution, under the seal of the company, duly authenticated by the president and secretary thereof, be furnished to the county court of Lincoln county. Unanimously adopted.

447 *Ralls County Subscription.*

STATE OF MISSOURI, *County of Ralls:*

In the Ralls County Court. Feb'y Term, March 3rd, 1869.

The following, among other, proceedings were had, to wit:

Subscription of $275,000 *by Ralls County to the St. L. & K. R. R. Co.*

"Now, at this day, the president of the court presents the memorial of the directors of the Saint Louis and Keokuk Railroad Company, dated St. Louis, Feb. 18th, 1869, and signed by the following persons, directors of said company, to wit, James O. Broadhead, Josiah Fogg, Isaac L. Garrison, James Duncan, E. Hayden, Barton Able, J. H. Britton, Levin H. Baker, Alex. Crozier, & James McKinzie, submitting to this court the following propositions, to wit:

1st. To locate the said railroad from the North Missouri railroad, beginning at or near Gilmore Springs or Wentzville, thence by Troy, in accordance with the conditions of Lincoln county subscriptions; then northward by Auburn to Buffalo Knob, in Pike county; thence, as required by the charter of said company, to the city of Louisiana; thence to Bowling Green, by arrangement with the Louisiana and Missouri Railroad Company or otherwise; thence by the most practicable route between Spencersburg and

Frankfort to New London, in Ralls county; thence to Hannibal.

448 2nd. To construct a branch of said railroad, diverging from the main line at New London, thence southwest, in the direction of Perry, to such point in Ralls county as may be agreed upon under general or special powers.

3rd. Ralls county to subscribe to the capital stock of said company the sum of $275,000 (two hundred and seventy-five thousand dollars), viz., $200,000 to the main line and $75,000 to the branch line, upon the conditions herein stated, said subscriptions to be paid as may be agreed.

4th. That upon the mutual adoption of the above propositions by the county court of Ralls county and this company the company proceed with the surveys and estimates of the cost of construction of said road-bed ready for the rails.

5th. Work to be begun and prosecuted at three points concurrently on the line of said road, viz., from the North Missouri railroad northward, from at or near Bowling Green northward, and from New London southward, and that the rate of expenditure in

449 the construction of said road shall be, as near as may be *be*, equal at each point, but this provision not to prevent the company from doing work northward from New London."

Which are read in open court and ordered to be filed; and, the the court considering thereof and being fully advised in the premises, it is ordered that the said propositions of said company be accepted by this court upon the conditions and reservations following, to wit:

1st. The subscriptions to the capital stock of said company by the county of Ralls may be paid in bonds of said county, which said company shall receive at par.

2nd. No bonds of said county shall be delivered to said company until the subscriptions, *bona fide*, made to the capital stock of said company shall equal in amount the estimates of the cost of the construction of said railroad ready for the rails from the North Missouri railroad to the Hannibal and St. Joseph railroad, not

450 including estimates of cost of construction of the divergence to and from Louisiana, east of the direct line northward and southward through or near Bowling Green, but bonds in proportion of the stock of Ralls county in said company may be applied to making the surveys of the cost of said railroad from the North Missouri railroad to the Hannibal and St. Joseph railroad.

3rd. The bonds of Ralls county which may be issued in pursuance of this order shall be held by the agent of Ralls county, and by him be delivered to said company only upon estimates of work actually done duly and fully certified to said agent by said company, except as above specified in aid of surveys and estimates, and except, further, that the said county may at its option pay the whole or any part of its subscription to the capital stock of said company in current funds or bonds: Provided, however, That Ralls county shall not be required to make any payments upon estimates for

work done in excess of the regular and legal calls, assessments,
451 or installments upon the whole capital stock of said company made upon and paid up by the stockholders by orders of said company.

4th. The said company shall locate, construct, and operate said railroad, as specified in their memorial to this court herein set forth, except, 1st, that they shall not be compelled to go to Buffalo Knob or to construct any part of said railroad diverging to and from Louisiana, east of the direct line northward and southward through or near Bowling Green; 2nd, that no part of the subscription of Ralls county shall be expended in Marion county; 3rd, that the work of construction of said railroad between New London and Hannibal and St. Joseph railroad shall not precede the work between said town and Bowling Green; 4th, that the said railroad shall pass within one-quarter of a mile of the court-house, in the town of New London, and said company shall erect and maintain a first-class freight and passenger depot at the junction of the main line
452 and branch railroad within the present corporate limits of said town.

5th. The said company, by themselves or others, shall locate, construct, and operate the branch railroad, in their said memorial mentioned, diverging from the main line at a point within the corporate limits of the town of New London, passing through the ridge southwest of said town, at "Woodson's Gap," and thence in as direct a line as may be practicable to the southeast corner of the west half of the southeast quarter of section thirty, township fifty-five, and range five west, and thence southwest on the south slope of the main ridge, in the direction of Perry, to such point in the Lick creek coal fields as may be agreed upon, which said branch shall be complete and in running order within twelve months from the completion of the main line from the Hannibal and St. Joseph railroad to the North Missouri railroad.

6th. Bonds for the construction of said branch railroad shall be delivered as provided for in the construction of the main line.

453 7th. The bonds provided for herein shall be issued under the seal of this court, signed by the president and attested by the clerk thereof and countersigned and dated by the agent of Ralls county only upon delivery to said company in denominations of five hundred dollars each, numbered from one to five hundred and fifty, bearing yearly interest at ten per centum per annum, having ten years to run, with coupons attached for the payment of annual interest, payable on the first day of April of each year, said bonds and coupons payable at the National Bank of the State of Missouri, in Saint Louis, or at the treasurer's office, in Ralls county, at the option of the holder.

8th. The said company shall never receive for transportation of freight or passengers over the main line or said branch from points within the county of Ralls to other points southward on the main line more than ten per cent. above regular through rates
454 from the termini of said railroad, distance in all cases being the ratio of charge.

9th. The said company shall accept the conditions of this order within sixty days from this date by a resolution of their board of directors, setting out their said memorial and this order and entering the same upon their record herein — legally authenticated copy of said resolution of acceptance.

10th. Upon the acceptance of this order by said company in the manner herein required it is ordered that the agent of Ralls county make subscription to the capital stock of said company in the name of the county of Ralls in the sum of two hundred and seventy-five thousand dollars, two hundred thousand dollars of which shall be expended in the construction of the main line and seventy-five thousand dollars in the construction of the said branch, in the manner hereinbefore specified.

455 And it is further ordered that Nathan S. Dimmitt be appointed the agent of Ralls county to represent the interests of said county and, if necessary, to contract with said company for the due performance of the several conditions herein, and in general to do and perform all acts, duties, offices, and services to protect the rights of the said county in the premises, subject to the approval of this court.

And it is further ordered that the clerk of this court furnish to said agent a duly certified copy of this order to lay before the board of directors of said company for consideration.

STATE OF MISSOURI, } ss:
County of Ralls, }

I, Geo. E. Marzhall, clerk of the county court in and for said county of Ralls, do hereby certify that the foregoing is a full, true, and correct copy of the order of said court in the above cause made at the time therein specified, as the same now appears upon the records of this court.

In testimony whereof I have hereunto signed my name and affixed my official seal.

Done at office in New London in said county, March 9th, 1869.

GEO. E. MARZHALL,
Clerk Ralls County Court.

456 The foregoing orders were read and discussed, after which, on motion of Mr. Britton, the following preamble and resolutions were unanimously adopted:

Resolution of the Directors Accepting Said Subscription.

Whereas the following-named persons, James O. Broadhead, Josiah Fogg, E. Hayden, Isaac L. Garrison, Levin H. Baker, J. H. Britton, Jas. Duncan, Barton Able, Alex. Crozier, and James McKenzie, being directors of the St. Louis & Keokuk Railroad Company, did, on the 18th day of February, 1869, memorialize the county court of Ralls county, Mo., to make subscriptions to the capital stock of said company upon conditions in said memorial recited; and whereas

the county court of Ralls county did, on the 3rd day of March, 1869, accept the propositions and conditions in said memorial contained, upon certain conditions and reservations in said order of acceptance by said court therein set forth:

Therefore, be it resolved, That the order of the county court
457 of Ralls county be accepted upon the conditions and reservations therein specified, and that the said memorial of the said company to Ralls county court, together with the order of said court, be spread or entered upon the record of this company, and that a copy of these proceedings, embodying the memorial of the 18th of February, 1869, with the order of the county court of Ralls county, dated March 3rd, 1869, in respect thereof, be furnished, authenticated by the signature of the president and secretary of this company, under the common seal of the company, and be delivered to the agent of said Ralls county for record in said court.

459 *Contract of July* 15, 1872, *Between the St. L., H. & K. R. R. Co. & the Mo. & Ia. R'y Constr. Co.*

Copy of agreement or contract made and existing between the St. Louis, Hannibal and Keokuk Railroad Company and the Missouri and Iowa Railway Construction Company.

Memorandum of agreement made this 15th day of July, A. D. 1872, by and between the St. Louis, Hannibal and Keokuk Railroad Company, a corporation existing under and by virtue of the laws of the State of Missouri, party of the first part, and the Missouri and Iowa Railway Construction Company, a corporation existing under and by virtue of the laws of the State of Iowa, party of the second part, witnesseth:

That whereas said first party is engaged in constructing a railroad from St. Louis, in the State of Missouri, to Hannibal, in said State, via Troy, Bowling Green, and New London; and whereas said first party is in possession of a portion of the means for
460 building said road, but has not sufficient funds to complete and equip the same:

Now, therefore, in consideration of the covenants and stipulations herein named and the payments herein agreed to be made, the said second party hereby agrees to assume and pay all debts of said first party contracted prior to this date, and also to assume and carry out all contracts heretofore made with corporations or individuals for work done or to be done and for materials furnished on said line, and said second party further agrees to complete the grading, bridging, masonry, and tieing of that portion of said first parties' road hereinbefore mentioned; also to furnish all the rails, which are to be of a good quality of iron and of approved pattern, and weight not less than 50 lbs. per yard; also spikes, splice-bars, bolts, frogs, and switches, and lay the track in a first-class manner;
461 also to furnish the material and build all the necessary station-houses, engine-houses, water-tanks, turn-tables, and repair shops; also to furnish all the locomotives, passenger, baggage,

mail, platform, box, stock, and coal cars, all in sufficient quantities and of sufficient capacity to do all the business which may be offered with reasonable promptness and despatch.

Said second party further agrees to have said line of road from Hannibal to Dardenne or the intersection with the St. Louis, Kansas City and Northern railway completed within two years from this date and the balance of the line to St. Louis within two and a half years from this date and as much sooner as the work can reasonably be done.

It is mutually agreed and understood that all the work of every kind to be done and materials of every kind to be furnished by said second party are to be subject to the inspection and the ap-
462 proval and according to the directions of the chief engineer of said first party, and the entire work is to be done in a good and workmanlike manner and equal to the average of first-class new roads, and when completed is to be subject to the acceptance of the president and chief engineer of the party of the first part.

In consideration of the completing and equipping of said road as hereinbefore mentioned by said second party said first party hereby agrees to pay said second party in the manner hereinafter stated twenty thousand dollars per mile of track in the first-mortgage thirty-year bonds of said first party, bearing either seven per centum, both principal and interest payable in gold, or eight per cent., interest, both principal and interest payable in United States currency, and also twenty thousand dollars per mile of track in the capital stock of said first party.

It is further agreed that the chief engineer of said first
463 party, shall, between the first and fifth of each month, make an estimate of the total amount of work done on said line and of the iron and rolling-stock and other materials furnished, and also of the total cost of said road when completed and equipped as provided for in this contract, and second party shall then be entitled to receive, and said first party hereby agrees to pay whenever called for, the same proportion of stock and bonds herein agreed to be paid as said estimate of work done and materials, &c., furnished, bears to the total cost of said road as estimated by said chief engineer, less ten per cent., which percentage said first party is to retain until sections of at least ten miles are completed, when said second party shall become entitled to the said retained percentage. It is also mutually agreed and understood that the second party shall
464 be entitled to the possession, occupancy, and use of the road from and after the execution of this contract until the same is completed and accepted by first party in sections as aforesaid.

It is mutually agreed and understood that second party is not required by the contract to bridge the Missouri river, but that second party shall undertake to obtain fair and reasonable rates for the business of first party's road over the St. Charles bridge, which rates shall be acceptable to the presidents of first party, and, in the event of a failure to obtain such rates, said second party shall furnish a good and sufficient transfer boat capable of promptly transferring all the business of the road.

It is also mutually agreed and understood that, in case said second party should at any time succeed in negotiating a sale of the entire issue of first party's bonds which by this contract are
465 to be paid to said second party, the bonds then in first party's possession shall be sold with those belonging to second party, and first party shall thereafter pay cash in place of bonds and in the same proportion as hereinbefore mentioned.

It is also further mutually agreed and understood that the issue of bonds and stock by first party shall in no case exceed twenty thousand dollars of cash per mile of track, but said second party shall furnish full-paid stock of said first party to all subscribers thereto, both corporate and individuals, as fast as the same is paid up and the proceeds turned over to second party, or said first party may, at its option, issue its stock in such cases when it has second party's receipts for the proceeds thereof, and charge said second party therewith as part payment under this contract.

467 Mr. CARR: We rest.

Defendants' Demurrer to Complainant's Evidence in Support of his Cross-Bills.

Now comes the said trustee, by Theodore G. Case, his attorney, and enters his demurrer to all of the evidence which has been introduced by Josiah Fogg in support of his cross-bill and answer to the foreclosure bill in this case, and gives notice that on the hearing of this case he will move to strike out the entire testimony, and have his said demurrer hereby entered sustained.

The MASTER: I overrule the demurrer.

Counsel for the trustee excepted to the ruling.

469 *Evidence for Defendants in Opposition to the Evidence of Josiah Fogg in Support of His Cross-Bill and Answer.*

In the United States Circuit Court, Eastern District of Missouri, *ss.*

DE WITT C. BLAIR, Trustee, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK RAILROAD COMPANY *et al.*, Defendants.
} No. 2301. In Equity.

In the matter of the cross-bill and answer of Josiah Fogg.

Pursuant to notice, duly served upon counsel and the parties engaged in hearing the matter of additional evidence in the case of Josiah Fogg against The St. Louis, Hannibal & Keokuk railroad and others, on August 26th, 1885, the hearing was commenced at 10.30 a. m. The parties, not being prepared to proceed with the taking of said testimony, entered into a stipulation, filed herewith, signed by counsel for both parties, whereby it was agreed that the taking of the testimony herein might be adjourned to any time on

or before September 4th, 1885. In pursuance of such stipu-
470 lation, counsel were duly notified that the further hearing of the testimony in this case would be continued at the office of the master on September 3d, at 10 o'clock a. m.

On September 3d, at 10 o'clock a. m., James Carr, A. J. P. Garesche, George D. Reynolds, counsel for plaintiff Fogg; Theodore G. Case, counsel for the trustee; Josiah Fogg, and D. C. Blair, trustee, being present, and all parties having been duly notified, the matter was proceeded with as follows:

Testimony of De Witt C. Blair.

DE WITT C. BLAIR, being duly sworn, testifies as follows:

Direct examination by Mr. CASE:

Q. Where do you reside?
A. I reside at Belvidere, New Jersey.
Q. How long have you resided in that place?
A. Twenty-five years.
Q. What is your occupation?
A. Banker.
Q. Where are you engaged in business?
A. At the town in which I live—Belvidere, New Jersey.
Q. Are you the De Witt C. Blair who is now foreclosing the first mortgage, given by the St. Louis, Hannibal and Keokuk Railroad Company, in the United States court for the eastern district of Missouri?
A. I am.

Q. Were there any more mortgages executed by the St.
471 Louis, Hannibal & Keokuk Railroad Company, of which you were trustee, prior to the one which is now being foreclosed in the United States court in this city?
A. Yes, sir.
Q. What became of those mortgages?
A. They were destroyed—cancelled.
Q. As the trustee of the mortgage now being foreclosed, did you at any time examine the books of the St. Louis, Hannibal & Keokuk Railroad Company to ascertain what indebtedness might be against that company?
A. I don't understand that question exactly.
Question repeated.
A. I don't remember of examining their books.
Q. Were you ever at Hannibal, Missouri, which was the headquarters of the St. Louis, Hannibal & Keokuk Railroad Company, prior to your becoming trustee in the mortgage now being foreclosed?
A. No, sir.
Q. Did you become trustee of that mortgage by request of that company or by request of the bondholders?
A. I think both parties requested me.

Q. Where did you meet the officials or the proper representatives of the St. Louis, Hannibal & Keokuk Railroad Company at
472 the time this request was made?

A. I think it was in the city of New York.

Q. At that time were there any communications made to you of any kind concerning the indebedtness of the St. Louis, Hannibal & Keokuk Railroad Company by those representatives?

A. None whatever, in my recollection.

Mr. Garesche objects to this testimony as incompetent against Josiah Fogg. Objection overruled.

Q. At the time you met the officials of that company in New York city was there or not any mention made to you by the officials of that company of any claim of any description which Josiah Fogg had against the company?

Mr. Reynolds objects to the form of the question as leading.

Mr. Garesche objects to the substance of the question as incompetent and irrelevant.

The master sustains the objection on the ground that the question is leading.

Q. Was there any mention made to you that Josiah Fogg had any claim against that company?

Mr. Garesche objects to the question as leading. Objection
473 sustained; counsel for the trustee excepts.

Q. When did you first learn of a claim of Josiah Fogg against the company?

A. Since the commencement of this suit.

Q. You mean by this suit since the commencement of the foreclosure suit in the United States court in Missouri?

A. Yes, sir.

Q. Did or did not the officials of the St. Louis, Hannibal & Keokuk Railroad Company ever submit to you, as trustee, any list of the creditors of that company?

Mr. Reynolds and Mr. Garesche object to the question as irrelevant and incompetent. Objection overruled.

A. They never did.

Q. Mr. Reynolds in the matter of the intervening petition of Josiah Fogg, on the direct testimony in that case, testified from an examination which he made of the books of the St. Louis, Hannibal & Keokuk Railroad Company that he ascertained there were some thirty or thirty-two shares of stock in that company issued to you on August 10th, 1857. Do you recollect anything of that circumstance?

A. No, sir; I never received any stock direct from the com-
474 pany in my life.

Q. Did you ever attend any of the meetings of the St. Louis, Hannibal & Keokuk Railroad Company?

A. I never did.

Q. Were you a director of that company?

A. I have never received notice from the company of my election as director.

Q. Were you, prior to the commencement of this suit in the United States court, ever over that railroad or in the territory through which it runs?

A. I have never been over the road in my life.

Q. Did you or not ever have any consultations with any of the officials of that company prior to the institution of this suit, now pending in the United States court, in regard to its financial affairs?

A. Consultations with whom?

Q. Consultations with the officials of the St. Louis, Hannibal & Keokuk Railroad Company.

A. No, sir; I have had nothing to do with their business whatever.

Cross-examination by Mr. REYNOLDS:

Q. What relation are you to John I. Blair, if any?

A. I am a son of his.

Q. Do you live in the same place?

A. No, sir.

Q. How far apart?

A. Fifteen miles apart.

475 Q. When did you first have anything to do with the St. Louis, Hannibal & Keokuk Company or any of its affairs?

A. When the first mortgage was executed.

Q. When was that?

A. I cannot recall the date exactly; the mortgage will show.

Q. About how many years ago was it?

A. I have forgotten the date; ten or twelve years ago, I think; more than that probably.

The MASTER: You mean the mortgage that was cancelled, Mr. Reynolds?

Mr. REYNOLDS: Yes, sir.

Q. What, if anything, did you then have to do with the affairs of that company under the first mortgage?

A. I had the signing of the bonds.

Q. Were you not the fiscal agent of the company for the sale of those bonds?

A. No, sir.

Q To whom did you sell any of them?

A. I never sold any of them.

Q. What did you do with them?

A. They were deposited in the bank, I think, for safe keeping.

Q. Did you certify any of them out?

A. Not unless it was by direction of the company.

Q. Well, did you do it under those circumstances?

476 A. If I did it was under direction of the company.

Q. You did have that duty, that if the company directed it you would certify out the bonds?

A. Whatever duty was required of me I had to perform.

Q. What I am trying to get at is what things you did do under that mortgage?

Counsel for the trustee objects to the question as immaterial. Objection overruled; exception taken.

A. I don't recollect now what my duties were particularly.

Q. I am not asking what your duties were. I am asking you what acts you performed.

A. If any act at all it was to deliver the bonds upon the order of the company to such parties to whom they requested them to be delivered.

Q. Did you, in point of fact, deliver any of those bonds to any persons?

A. I do not recollect now. I may perhaps have done so.

Q. Thinking it over now, have you any recollection of having delivered any bonds under that first mortgage?

A. I have not any recollection now; it is so long ago.

Q. Can you state now, from your present recollection,
477 whether as a matter of fact any bonds were delivered under that first mortgage to any one?

A. I cannot recollect.

Q. You have no recollection on the subject?

A. No, sir.

Q. What knowledge, if any, did you have of the relations of your father, John I. Blair, with the St. Louis, Hannibal & Keokuk?

Counsel for the trustee objects to the question, as Mr. John I. Blair is the proper party to whom the question should be propounded. Objection overruled; exception taken.

A. I have no knowledge of what transpired between John I. Blair and the company, so far as my action as trustee is concerned.

Q. I am not speaking of your action as trustee; I am speaking of you as an individual.

A. I know nothing of his business.

Q. When did you first know or hear of your father, John I. Blair, having any business relations with the St. Louis, Hannibal & Keokuk Railroad Company?

Counsel for the trustee objects to this question. Objection overruled; exception taken.

A. I cannot tell or state any time except general conver-
478 sations about the propriety of issuing first-mortgage bonds—parties speaking of it. That is all I know.

Q. What parties do you mean?

A. Officers of the road.

Q. What road?

A. The St. Louis, Hannibal & Keokuk road.

Q. Who were the officers you heard speaking of it?

A. I remember one of the officers by the name of W. W. Walker, I think.

Q. Who else?
A. I think another gentleman's name was Mr. Ely.
Q. John F. Ely?
A. I think so.
Q. Where was this conversation, or where did you hear this matter spoken of, when Mr. Walker and Mr. Ely discussed it?
A. I think in the city of New York.
Q. Was it between them and your father or between them and you?
A. They were speaking to my father on the subject. I was present, simply.
Q. When was the first you knew of your father having made a contract of the date of the 27th of October, 1874, with the Missouri and Iowa Railway Construction Company?

479 Counsel for the trustees objects to the question because the witness has not testified that he knows anything about such a contract. Objection overruled; exception taken.

A. I knew nothing of such a contract.
Q. When did you first hear of the Missouri & Iowa Railway Construction Company?
A. I cannot remember, but it is since the road was constructed, I think, or commenced being constructed I heard some talk about it.
Q. Did you know, as a matter of fact, that they were under contract for the constuction of that road when your father first furnished iron for it?
A. No, sir.
Q. You knew, as a matter of fact, that they were parties to the first mortgage that was executed in which you were trustee, didn't you?
A. Which parties?
Q. The Missouri & Iowa Railway Construction Company?
A. Not unless it was mentioned in the mortgage.
Q. You, of course, read that first mortgage over, didn't you—you knew what was in it?
A. I think I read it over.
Q. You signed it?
A. I think so.
Q. Executed it?
A. Yes, sir.
Q. You had every opportunity to read it if you wanted to?
A. Yes, sir.

480 Q. You speak of that being the first mortgage. I suppose you mean by that the first mortgage that you were trustee in.
A. Yes, sir.
Q. Are you aware of the fact that on the 1st of August, 1873, the St. Louis, Hannibal & Keokuk Railroad Company had executed a mortgage to the Farmers' Loan & Trust Company of the city of New York, as trustee, to secure the issue of bonds? Do you remember that fact now?
A. I don't remember that fact.

Q. Who was the trustee with you, if any one, in that first mortgage?

A. I think Mr. Clarence G. Mitchell was my cotrustee.

Q. That mortgage was satisfied on the 24th day of May, 1873, I find by the records of the company. Do you remember anything about that?

A. I think that is about it.

Q. The deed of release was executed by you and Mr. Mitchell?

A. Yes, sir.

Q. That mortgage you read over, you suppose, or you had the opportunity to read it over?

A. I think I read it over.

Q. Do you remember the fact, after the execution of that mortgage and before the execution of this mortgage now sued on,

481 that the company executed a mortgage to the Farmers' Loan and Trust Company of the city of New York?

Counsel for the trustee objects to the question, as calling for secondary evidence and as immaterial. Objection overruled; exception taken.

A. I think they did.

Q. I am not asking you for the fact, but I am asking whether you recollect that such a fact existed?

A. I cannot distinctly recollect.

Q. You said, in answer to my question, that you thought they did. What did you mean by that?

A. I think they did, I said.

Q. You have some recollection of the fact that after the cancellation of the first mortgage, in which you and Mr. Mitchell were the trustees on the 1st of August, 1873, they executed a mortgage to the Farmers' Loan & Trust Company. You have some recollection of that fact having taken place?

A. It is only an impression of mine.

Q. You knew at the time, probably?

A. I did at the time, probably.

Q. Have you any recollection of having seen that mortgage?

A. No.

482 Counsel for the trustee objects to this testimony, because the witness is not a representative of the Farmers' Loan & Trust Company. Objection overruled; exception taken.

Q. Do you know how long before the execution of that mortgage, in which you and Mitchell were the trustees—the mortgage of the 1st of October, 1872—the St. Louis, Hannibal & Keokuk Railroad Company had been incorporated under the laws of this State?

Counsel for the trustee objects to this testimony.

A. I do not.

Q. Do you know, as a matter of fact, that the articles of association of the St. Louis, Hannibal & Keokuk Railroad Company were signed by the incorporators on the 3rd day of June, 1872?

A. No, sir.
Q. Just four months before the execution of that first mortgage?
A. No, sir.
Q. You don't remember that fact?
A. I don't remember that fact.
Q. Had you any conversation with any of the officers of that company in regard to being made trustee in that first mortgage?
483 A. I think they requested me to act as trustee.
Q. Where did they make the request?
A. In the city of New York.
Q. Who made it?
A. I don't remember the names of all the parties present, but I remember that Mr. W. W. Walker made a special request that I should act as trustee under the mortgage.
Q. Did you ever see any resolution of the directors of the company authorizing the execution of that first mortgage?
A. I don't recall the fact if I did?
Q. Were you told that any such resolution had been passed?
A. I think Mr. Walker informed me that they had full authority to issue the mortgage.
Q. Did I understand you to say that you were engaged in the banking business?
A. Yes, sir.
Q. In what capacity?
A. As vice-president.
Q. Of what bank?
A. The Belvidere National Bank.
Q. You have been extensively engaged in business for quite a number of years?
A. Yes, sir.
Q. May I ask you to state, for the information of the court, your age?
A. About fifty-two years old.
484 Q. You have been in active business for thirty-odd years or more?
A. Yes, sir.
Q. And to what extent; pretty extensively?
A. Well, I have had a portion of the time very well occupied in business affairs?
Q. You have been actively in business for that time?
A. More or less.
Q. To what extent have you been engaged in handling railroad securities during that time?
A. I never handled any railroad securities except my own, or except to act as trustee for this railroad.
Q. For your father?
A. For the company?
Q. The road in which your father is interested?
A. I suppose so.

Q. Do I understand you that this is the only road in which you ever acted as trustee?

A. I think so.

Q. Did your father request you to act as one of the trustees?

A. I don't remember that he did.

Q. You understood he had an interest in it?

A. I understood afterwards he had some interest in it.

Q. You understood that before you consented to act as trustee?

A. No, sir; I knew nothing about his arrangements with
485 the railroad at all.

Q. I am not asking about the details of the matter; didn't you understand he had some interest in the road at the time you consented to act as trustee under the first mortgage?

A. All I knew was that he sold them some iron; agreed to sell them some iron; that is all I know of his connection with the road.

Q. You knew he was interested in a contract for furnishing that iron to iron the road with?

A. I think he was to furnish the iron for the road, sell them the iron and to take their notes or security for the iron.

Q. Do you know what those notes were?

A. I do not.

Q. Don't you know, in point of fact, those were the notes of the Missouri & Iowa Railway Construction Company, endorsed by the St. Louis, Hannibal & Keokuk Railroad Company?

A. No, sir.

Q. Do you know whether or not his contract was with the St. Louis, Hannibal & Keokuk Railroad Company for the fur-
486 nishing of iron to iron the road, or whether it was with the Missouri & Iowa Railway Construction Company?

A. No, sir.

Q. Do you remember now whether the question of the relation of the Missouri & Iowa Railway Construction Company to this road came up at the time you first entered on your duty as trustee?

A. No, sir.

Q. Had you heard of it at that time?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. When was the first you did hear of it?

A. Not until long afterwards.

Q. Do you undertake to say the first mortgage did not recite that contract?

A. It may have.

Q. If it recited it you knew of it?

A. If it recited it and I read it I certainly should have known it. I don't recall it, not having read the mortgage for many years.

Q. You say you did not see the resolution or a copy of it under which the first mortgage was executed?

A. I don't remember; I may have.

Q. Do you know how much roadway was constructed at the time of the execution of that first mortgage?

A. I do not know.

Q. Did you know then?

487 A. No; I may have known then, but of course I cannot recall it now.

Q. Was there any discussion had in your presence between your father and Mr. Walker and Mr. Ely, when they were in New York, in regard to the execution of this first mortgage of October, 1872, in reference to the progress of the work on the road or the situation of the road with regard to its construction at that time?

A. I don't recall any.

Q. At that time do you know whether the route of the road had been changed so as to leave off the old river route that went through Louisiana?

A. No, sir; I do not.

Q. Did you ever hear that question discussed?

A. No, sir.

Q. You say you have never seen the books of the company?

A. I said so.

Q. You have never seen them?

A. No, sir.

Q. Are you aware of the fact that the contract between your father and Moses Taylor and this road called for the representation in the board of directors of the St. Louis, Hannibal & Keokuk Rail-

488 road Company on the part of your father and Mr. Taylor?

A. I am not.

Q. Did you never hear of that before?

A. I don't recall it.

Q. Are you aware of the fact that in consequence of that you were made a member of the board of directors of the St. Louis, Hannibal & Keokuk railroad in 1874?

A. No, sir; I am not aware of it.

Q. Didn't you know that you had been elected a director?

A. No, sir; I did not.

Q. And never heard it before?

A. I have never heard it.

Q. Are you sure that you did not sign on the books of the company for thirty-two, or about that number, of shares of stock in the St. Louis, Hannibal & Keokuk Railroad Company?

A. I have no recollection of ever receipting for a share of stock from the company.

Q. Will you say that you did not?

A. No, sir; I will not, because I have no remembrance or recollection of it. To the best of my knowledge and belief I never did.

Q. Were not those stock books in New York?

A. I have never seen them.

489 Q. Did you ever see them at Cedar Rapids?

A. No, sir.

Q. Were you ever there?

A. Yes, sir.

Q. Did you meet Mr. Walker, Mr. George Douglas, and Mr. Ely there?

A. Yes, sir; I have often seen them in Cedar Rapids.

Q. Were not the headquarters of the St. Louis, Hannibal & Keokuk railroad kept at Cedar Rapids?

A. Not to my knowledge.

Q. Were not the residences of all the principal officers there?

A. I don't know who all the officers were.

Q. Mr. Walker?

A. He resided there.

Q. Mr. George Douglas?

A. He resided there.

Q. John F. Ely?

A. He resided there.

Q. S. P. Wisner?

A. He resided there.

Q. They all resided at Cedar Rapids?

A. They did at that time.

Q. And William Buchanaan?

A. I think so.

Q. He was secretary, was he not?

A. I think so.

Q. Wisner was treasurer?

A. I think so.

Q. Douglas at first was president and then afterwards Mr. Walker?

A. I don't remember who the officers were. I kept no run of their affairs at all.

490 Q. Those gentlemen you knew as managing men in this company.

A. They represented themselves as officers of this company, but I could not say to my knowledge they were.

Counsel for the trustee here gives notice that he will move the court to strike out this testimony in regard to the names and residences of the officers of the company and have the same taxed as costs against Mr. Fogg.

Q. You knew that these gentlemen were the ones, or that it was from that group of gentlemen I have named, that the officers of this company were selected, didn't you?

A. They represented themselves as officers. I don't know that of my own knowledge, but I understood that some of these gentlemen were acting as officers of the company.

Q. What do you mean by not knowing that of your own knowledge?

A. I never attended their elections.

Q. That is what you mean by that?

A. Yes, sir.

491 Q. You knew, in point of fact, that they held themselves out to be such officers?

A. I understood they held themselves out to be such officers.

Q. And on the request of the officers you acted as trustee?

A. Of Mr. Walker, especially.

Q. In what capacity was he?

A. I think he was president.

Q. You acted on the theory that he was an officer and he requested you to be trustee as president of the company?

A. I suppose so.

Q. You know so?

A. That was my understanding.

Q. I am not asking whether he was so in point of fact. I am asking whether you did not act on the supposition that he was president of the company.

A. I suppose so.

Q. Don't you know so?

A. To the best of my knowledge I acted on that supposition.

Q. You stated in your direct examination that it was at the request of the mortgagor and the bondholders also that you consented to act as trustee.

A. Yes, sir; and part of this group of gentlemen who represented the company.

492 Q. Who were the persons who represented the company and whom you claim made the request on behalf of the mortgagor?

A. Mr. Walker represented the company.

Q. Then you certainly recognized him as an officer, speaking and acting for the company?

A. Yes, sir.

Q. And you did know he was acting for the company and recognized him in that capacity?

A. Yes, sir; in that way.

Counsel for the trustee states that he admits that the witness knew that Mr. Walker was president of the company.

Q. Did you not learn in the conversation with those gentlemen at Cedar Rapids that the Missouri & Iowa Railway Construction Company had undertaken to build this road?

A. No, sir.

Q. Did you never hear of the notes given to your father to secure him the payment of the iron that he was furnishing for the laying of that road?

A. No, sir; I know nothing about the business between them.

Q. The notes given to your father?

493 A. No, sir; I know nothing about his business relations with the railroad whatever.

Q. You did not come out here to the West, either to Missouri or Iowa, before the execution of that mortgage that was made in 1872, to you and Mitchell, did you?

A. No, sir.

Q. Had you been out before?

A. I had never been out here before, unless in the year past.

Q. Were you ever in Cedar Rapids before?

A. Yes, sir; because that is the headquarters of all our Iowa railroads, and we meet there every May.

Q. I ask you whether you had been out in this country, in the West.

A. Not in the State of Missouri.

Q. You had been, however, in the State of Iowa?

A. Yes, sir.

Q. Had you not been in the State of Iowa, and were you not there about the year 1872?

A. I may have been there.

Q. And at Cedar Rapids?

A. I may have been there.

494 Q. Do you undertake to say the first you heard of this mortgage was in New York city, or is it not a fact that the matter was discussed in Cedar Rapids between Mr. Walker and Mr. Douglass in your presence?

A. I was not present, to the best of my recollection, nor did any conversation in my presence take place in respect to it at Cedar Rapids, that I remember.

Q. Did you know of your father making a contract in October, 1874, with the Missouri & Iowa Railway Construction Company and the St. Louis, Hannibal & Keokuk Railroad Company?

A. No, sir.

Q. You did not know anything about it?

A. No; nothing about it at all.

Q. Do you know about his having any contract with those parties to furnish iron and other materials for the equipment of the railroad from Frankfort to Bowling Green?

A. No, sir.

Q. Did you ever see the books of the St. Louis, Hannibal & Keokuk Railroad Company at Cedar Rapids?

A. I have never seen the books at any place or time in my life.

495 Q. Do you undertake to say that you were acting as trustee and acting for the company without knowing anything about it?

A. I only acted in the special line which the mortgage called for; that is all the business I had with the company.

Q. You simply acted, then, as trustee to take such directions as the parties gave you?

A. Yes, sir.

Q. And that is all you know about it?

A. Yes, sir.

Q. And you made no inquiries of any kind?

A. No, sir.

Q. Were you requested to do any acts as trustee?

A. I cannot remember now that I was.

Q. Under this present mortgage or under either mortgage—this mortgage or the mortgage of 1873?

A. I was requested to cancel the first mortgage.

Q. Who made that request?

A. The officers of the company.

Q. And you did cancel it?

A. Yes, sir.

Q. Hadn't you done anything in the way of the delivery of bonds under that mortgage or certifying bonds?

Counsel for the trustee objects to the question as immate-
496 rial and irrelevant. Objection overruled; exception taken.

A. I cannot recall what other action I took except the cancellation of the mortgage. I cannot recall it at this time.

Q. Under this mortgage sued on have you done anything except to issue bonds?

A. That is all.

Q. To whom did you issue them?

A. This last mortgage, you mean?

Q. Yes, sir.

A. I have done nothing but issue bonds to the parties to whom they were entitled.

Q. I ask you who they were.

A. I think I delivered some bonds to Mr. John I. Blair, Mr. Moses Taylor, and I think one other party, whose name I cannot now recall, a few bonds.

Q. How many did you deliver to John I. Blair?

A. I cannot tell. I have not a memorandum here.

Q. About how many?

A. His proportion, whatever he was entitled to.

Q. Under what?

A. His agreement, by order of the company, the amount he was entitled to.

Q. Do you remember how many that was?

A. I cannot remember.

Counsel for the trustee objects to this portion of the exami-
497 nation as having already been proven in the main case. Objection overruled; exception taken.

Q. Who determined the amount he was entitled to?

A. The company.

Q. Did they send you a written order?

A. Yes, sir.

Q. Where is it?

A. That is filed, I think.

Q. Where?

A. In New York, I think.

Q. With whom?

A. I think it must be with the other papers.

Q. What other papers?

A. I can-ot state positively where those orders are now, but I think Moses Taylor's estate holds them.

Q. I am asking you now about the bonds you gave to John I. Blair.

A. I think they are all together.

Q. All in one order?

A. No; different orders, but in one place.

Q. What are you doing with the orders of John I. Blair and of the Taylor estate?

A. I hold them all in the bank.

Q. For what purpose?

A. Safety.

Q. They are there as whose property?

A. They are there as my security, I suppose; memoranda as trustee, probably.

Q. Among your papers?

A. They belong to me as trustee.

498 Q. About how many bonds did you deliver to Mr. John I. Blair under his orders?

Same objection.

A. That I cannot recall.

Q. I am speaking of the bonds under this last mortgage. When did you deliver him the bonds under that?

A. I cannot remember the time.

Q. About when?

A. After certain portion of the rails had been laid upon the road.

Q. How do you know that?

A. Because I was careful not to pay out any securities held in my possession as trustee until they had fulfilled their agreement as contained in the mortgage. They were not entitled to only so many bonds to every mile that they had actually constructed and built.

Q. How do you know that?

A. That, I think, was recited in the mortgage.

Q. In the mortgage?

A. No; not in the mortgage.

Q. Where was that recited?

A. That I cannot recall.

Q. You know there was some such recital in some such

499 contract or agreement?

A. I know they were not entitled to bonds until they had constructed some part of the road.

Q. How do you know that?

A. The president informed me.

Q. Where?

A. In New York.

Q. Did you ever see any written statement to that effect?

A. I may have; I can't recall it now.

Q. Don't you know that was in consequence of a contract between your father and Moses Taylor?

A. I do not; I never saw any contract of the kind.

Q. You saw this instruction in writing?

A. I was instructed by the president verbally.

Q. Didn't you say it was your duty to see that they got no more bonds than they were entitled to as they constructed the road?

A. Yes, sir.

Q. How could you say that if there was no writing to that effect?

A. The president so informed me.
Q. All you had to go by was what the president told you then?
A. By his orders and the certificate of the proper authorities along the road certifying that so many miles of road had been con-
500 structed, and ordering me to issue bonds to such parties who were entitled to them, and I issued the bonds and took their vouchers, receipts.
Q. You say you never saw that contract?
A. I may have; but I cannot remember.
Q. You knew nothing about it?
A. I cannot recall it.
Q. You stated you signed both of the deeds of trust?
A. Yes, sir.
Q. You don't remember distinctly whether you read them over, but you had the opportunity to read them over?
A. I had the opportunity to read them over, especially the first one.
Q. Why especially the first?
A. That impressed itself on my mind more because that was the first trusteeship that I consented to act in.
Q. If that recited the fact of the contract with the Missouri and Iowa Railway Construction Company, you did know of that fact at that time, in 1872, didn't you?
A. If I read it over I must have.
Q. You have just stated you read it over.
A. I presume I did.
501 Q. Well, now, have you no idea how many bonds you delivered to John I. Blair under this mortgage sued on?
A. Not at this time.
Q. How many did you deliver to Moses Taylor?
A. I have no recollection now.
Q. A large or small amount?
A. A large amount.
Q. To each of them?
A. Yes, sir; I think so.
Q. How many did you deliver to this third person you speak of?
A. A few bonds only.
Q. What do you mean by a few?
A. Thirteen or fourteen.
Q. The bulk of them were delivered to Moses Taylor and John I. Blair and no one else?
A. Not to my recollection.
Q. When did Moses Taylor die, as near as you can remember?
A. A year ago, I think.
Q. At what place?
A. The city of New York.
Q. He was residing there at the time?
A. Yes, sir.
Q. A year ago?
A. It may have been more than a year. It is at least a year, I think.

502 Q. Have you delivered any bonds to his executors or the representative of his estate since his death?

A. I think not.

Q. Did you deliver all these bonds to John I. Blair and Moses Taylor at one time?

A. I don't know whether I delivered them all at the same time or not. I cannot state positively as to that, whether at one time or at different times.

Q. They had been up to that time in your possession—these bonds?

A. Yes, sir.

Q. And you delivered them to them absolutely?

A. Yes, sir.

Q. Did you deliver them any stock of this road along with the bonds?

A. I cannot remember that I did.

Q. Will you say you did not?

A. I cannot remember.

Q. Will you say you did not?

A. No, sir.

Q. Was there ever any stock of this road, any shares of stock, placed in your hands as trustee?

A. I don't remember that there was. I think not.

Q. You think you did not deliver any stock at the time you delivered the bonds?

503 A. I don't remember of doing so.

Q. How did you deliver these bonds to John I. Blair and Moses Taylor?

A. I counted them out.

Q. Did you take any papers from them about that time?

A. Yes, sir.

Q. What kind?

A. Vouchers.

Q. An ordinary receipt?

A. An ordinary receipt for the numbers of the bonds, the amounts of the bonds, and the denomination of the bonds.

Q. And they were turned over to them as their property absolutely?

A. Yes, sir.

Q. Where is that receipt?

A. In New York.

Q. How many receipts have you?

A. I have receipts for all the bonds I have delivered.

Q. How many different receipts are there?

A. That I cannot tell.

Q. Will you say that there is more than one from each party?

A. I think so.

Q. You don't remember when that transaction of the delivery of these bonds took place?

A. No, sir.

Q. Can you give us an idea of how many years ago it was?

A. No, I cannot tell.
504 Q. Could you say it was any earlier than 1883?
A. I should say it was about that time.
Q. It was in consequence of the materials and iron that your father and Moses Taylor had supplied in the final construction done on that road that these bonds were delivered, was it not?
A. I suppose it was for iron and materials furnished in the construction of the road.
Q. I want to get at the extent of your knowledge—whether it was for the construction of the south end of the road down at Gilmore?
A. That I couldn't tell.
Q. You don't know anything about that?
A. No, sir.
Q. Did you attempt to negotiate any of these bonds with any parties outside of your father and Moses Taylor?
A. No, sir.
Q. What did John I. Blair or Moses Taylor give you for these bonds?

Counsel for the trustee objects to the question as immaterial and irrelevant. Objection overruled; exception taken.

A. Do you mean whether par? I presume it was at par. I knew nothing to the contrary.
Q. What did they give you?
505 A. They gave me a voucher.
Q. I am asking you what they gave you for these bonds?
A. What amount they gave me?

Mr. CASE: They gave him a receipt for them.
The WITNESS: They gave me their receipt.

Q. Why didn't you think of that before Mr. Case suggested it?
A. I stated it several times, but I am rather confused about it. I said I had taken their vouchers.
Q. I am asking you what those vouchers consisted of?
A. Receipts.
Q. Was that all they gave you?
A. Yes, sir.
Q. Did they give you any other bonds?
A. Not that I remember of, sir.
Q. They did not?
A. No, sir.
Q. In no instance?
A. Not that I recollect.
Q. Will you say they did not?
A. Not to my best knowledge and belief.
Q. Will you say they gave you nothing but their receipts for the bonds you gave them?
A. Yes, sir.
Q. You were the trustee in the first mortgage?
A. Yes, sir.
506 Q. And you had the custody of the bonds under that?

A. Yes, sir; I think so.
Q. You and Mr. Mitchell together?
A. Yes, sir.
Q. Your father had some of those bonds, hadn't he?
A. I don't remember of his having any. I can't recollect of his having any.
Q. He didn't give you any of those bonds in exchange for these bonds you gave him under the second mortgage?
A. I think not.
Q. Nor did Moses Taylor?
A. No, sir.
Q. They gave you orders for turning over to them so many bonds, and when you turned them over you took their receipts, and that was all you had to do with it?
A. Yes, sir; that is the whole business I had to do with these gentlemen.
Q. And the whole business you had to do with the company?
A. Yes, sir.
Q. You don't know whether the officers of the company, the St. Louis, Hannibal & Keokuk railroad, signed those orders on you or not?
A. Whether the officers of the company signed the orders?
Q. Yes.
507 A. I was under the impression that they were the officers of the company, and I recognized them as such, and I obeyed their orders as such. That is all I know. If they were not, then I was deceived.
Q. You didn't know their signatures?
A. I knew W. W. Walker's signature.
Q. You didn't know anybody else's signature?
A. I would not be willing to swear positively to any of the other officers' signatures, except I think I have seen Mr. Buchanaan's signature.
Q. By whom were the orders presented to you?
A. They were sent by mail as a general thing, I think.
Q. There was more than one order?
A. I think so.
Q. Have you those orders?
A. No, sir.
Q. Where are they?
A. I believe they are in New York.
Q. In whose custody?
A. In my custody in the bank.
Q. Will you produce them?
A. Not to-day.
Q. Will you produce those orders and file them with the master as part of your testimony in this case?
508 Counsel for the trustee objects. Objection overruled; exception taken.

A. I will do my best to try and find them and produce them if they are wanted. It will take some time, probably.

Counsel for the trustee instructs his client not to produce those certificates.

Q. Are you willing to send on those certificates to the master when you get where you can get control of them?

A. If it is absolutely necessary I should be willing to obey the orders of the court to produce them.

Q. That is not the question. I ask you whether you are willing to send them to the master and file them as exhibits to your testimony in this case?

A. If I can find them among my papers.

Q. Will you look for them and do so if you find them?

A. I will look for them; yes, sir.

Counsel for the trustee states that he will not present them if the witness finds them without an order of the court.

509 Q. I will ask you whether you were not, as trustee, specifically required to exchange the bonds of the first mortgage for the bonds of the mortgage now sued on at the rate of twelve of the new for twenty of the old.

A. I think there was some order to that effect.

Q. I understood you to say you did not make any exchange of anything for these bonds?

A. I did not recollect the circumstance.

Q. Didn't you state, in your answer to my question a while ago, that you didn't take anything for these bonds except the order and the receipt?

A. I think I did.

Q. Then, when I asked you if you had exchanged them for anything else, you said no?

A. I think I did.

Q. You still adhere to that answer?

A. No; I may be mistaken about that.

Q. You may have exchanged other bonds for them?

A. Yes, sir. The three mortgages I get confused somewhat.

Q. How many mortgages?

A. The two mortgages, I say, I get confused on.

510 Q. That is, you have not a very distinct recollection about this matter at all, have you?

A. I have, some portions of it; yes, sir.

Q. You have forgotten all about the contract under which your father and Moses Taylor was to receive these bonds?

A. Yes, sir.

Q. You know there was some such contract?

A. I don't remember of ever seeing that contract.

Q. I mean to say that you know from the conversation between the parties there was some such contract claimed to exist?

A. I inferred that from Mr. Walker's conversation.

Q. Didn't you know that from your father's conversation?

A. I never saw the contract. I never read it.

Q. Didn't you know, from the conversation between the parties, that they claimed that some such contract did exist?

A. I inferred that.

Q. From the conversation between the parties?

A. Yes, sir.

Q. That there was a contract in existence under which these bonds were delivered to your father and Moses Taylor?

511 A. Yes, sir; from the president of the company.

Q. You got that from the president of the company?

A. I think so.

Q. Not from your father?

A. No, sir; not that I remember.

Q. Are you certain he did not say anything to you about it?

A. I don't remember it. He may have, but I cannot recall it.

Q. Did you ever see this resolution? "Resolved, That D. C. Blair, trustee, be authorized and requested to pay J. I. Blair in bonds, for exchange or cash, as the case may be, for the amount said J. I. Blair may be obliged to pay the New York Warehouse and Security Company for the ten old bonds held by that company as aforesaid. In case there is not a sufficient amount from the net proceeds of sales of bonds in the hands of said trustee for this purpose, then said trustee is authorized to place a sufficient amount of the new bonds in the hands of said John I. Blair as security for the payment of any balance due him on account of the purchase of said ten bonds."

512 Did you ever see any such resolution as that?

A. I may have seen that resolution.

Q. Did you act on it?

A. I suppose I did.

Q. Did you ever see such a resolution as this? "That D. C. Blair, trustee as aforesaid, be, and is hereby, authorized and requested to exchange the bonds of which he is trustee with the bondholders of the old bonds, to the number of seven hundred and eighty-three bonds as aforesaid, giving twelve of the new bonds of which he is trustee for twenty of the old bonds, and he is also authorized and requested to procure as speedily as practicable the remaining bonds of said first issue not now in the hands of the old trustee and cause them to be placed in the hands of said trustee, the Farmers' Loan and Trust Company, for cancellation, to the end that the whole of said issue of twenty-five hundred bonds may be cancelled and destroyed without delay, and that the mortgage or deed of

513 trust given to secure said old bonds be cancelled, and said D. C. Blair is requested to procure a certificate of such cancellation by the trustee, that said mortgage or deed of trust may be cancelled on the records of the several counties where the same is recorded." Was it under that resolution that you got them for cancellation?

A. I suppose so.

Q. You saw a copy of that resolution or the resolution itself, probably?

A. I suppose so.

Q. What is the name of your bank?
A. The Belvidere National Bank.
Q. Of what place?
A. Belvidere, New Jersey.
Q. How many of those bonds did your bank hold of either issue?
A. I cannot state.
Q. They held some?
A. Not to my recollection now.
Q. How much indebtedness did that railroad have to your bank?
A. I don't remember of their owing us—of their being indebted to us.

514 Q. I will ask you whether this preamble was not attached to the resolution that I read you a while ago, and which you said you had seen: "And whereas a portion of the said old bonds are now held as collateral security for the payment of indebtedness of the said railroad company by the Belvidere National Bank of Belvidere, New Jersey, John I. Blair, and Moses Taylor for the Lackawanna Iron and Coal Company, and John I. Blair and Moses Taylor for themselves, together amounting to the number of 783 bonds of $1,000 each, and the balance of said issue of old bonds being in the hands of the estate of John Mitchell (1,700 bonds), ten (10) of said old bonds being held by the New York Warehouse and Security Company of the City of New York, and the remaining seven (7) of said old bonds being now in the hands of the Farmers' Loan and Trust Company, trustee as aforesaid, for cancellation." Do you remember of seeing that preamble to the resolution under which you were authorized to make the exchange of the bonds?

A. I don't remember it now.

515 Q. Is that a false or true statement in there as to the holding of those bonds by your bank?
A. It may be true. They may have been placed there as collateral.
Q. You have no recollection of it?
A. No, sir.
Q. Who was the managing man of that national bank in the year 1879?
A. John I. Blair.
Q. What office did he hold in that bank?
A. President.
Q. Is he now that?
A. Yes, sir.
Q. Has he been all the time president?
A. Yes, sir.
Q. And you and he are connected in business in the bank, you being the vice-president of it?
A. Yes, sir.
Q. What bank in New Yark was it those receipts were in?
A. The City Bank of New York.
Q. Do you know anything about your bank having held forty-two

bonds as collateral for an indebtedness due from the railroad company to your bank?

A. The bank may have held such bonds as collateral for some loan.

By the MASTER:

Q. Do you remember whether they did or not?

A. No, sir.

516 By Mr. REYNOLDS:

Q. Who transacted the business for your bank with this railroad company—under whose immediate supervision would that come?

A. Under the supervision of the board of directors.

Q. Through what officer?

A. Through the cashier and the board of directors—the officers of the bank.

Q. Do you know anything about an arrangement by which your father, John I. Blair, and Moses Taylor agreed to surrender their notes and first-mortgage bonds in exchange for the bonds of this other mortgage?

Counsel for the trustee objects.

A. No, sir; I do not.

Q. Did you ever see a contract, of date the 24th of February, 1881, between your father, John I. Blair, and Moses Taylor, on the one part, and the St. Louis, Hannibal and Keokuk Railroad Company, on the other part, in regard to the construction of the road from the south line of Pike county, in the State of Missouri, to the Wabash railroad?

A. No, sir.

517 Q. I understand you to say that it was after that date—some time after 1881—that you delivered what bonds you did to your father and to the Moses Taylor estate?

A. Yes, sir; I think so.

Q. Did you ever know that under the contract that I have just referred to that John I. Blair, your father, and Moses Taylor were entitled to representation in the board of directors?

A. No, sir.

Q. You say you were not aware of the fact that in 1883 you were elected a director?

A. I was not aware of the fact.

Q. Did you ever hear of that contract that I have just asked you about?

A. I have never heard of that contract.

Q. If I understand you, then, you had nothing to do, one way or the other, with this company or its affairs?

A. No, sir; I had nothing to do with their contracts or business affairs whatever. I was simply acting as trustee; that is all.

Q. You were not there as trustee, were you?

A. I understood so.

Q. You have not been stating anything you did as trustee.
518 What have you done as trustee?
A. I have answered your questions as to what I have done as trustee, I think.
Q. You did nothing but what you have testified to here as trustee?
A. No, sir.
Q. Were you in New York when Mr. W. W. Walker came on to see your father, just before the institution of this suit for foreclosure?
A. I don't remember of meeting him in New York with my father at that time.
Q. Or New Jersey, your home?
A. No, sir; I don't think I did.
Q. When was the last time you remember of meeting Mr. Walker?
A. I think the last time I saw Mr. Walker was probably when I was passing through Chicago, I think, a year ago or more.
Q. When was the last time before the suit was commenced?
A. I don't remember.
Q. Where did you see him a year ago?
A. He may have been in the hotel in Chicago; I think so.
Q. That was after this suit was commenced?
A. I think so.
Q. Do you know when this suit was commenced?
A. No; I do not.
519 Q. Have you taken any part in conducting this suit?
A. No, sir.
Q. Who has?
A. The receiver of the road.
Q. The receiver of the road has conducted this suit?
A. I suppose so; the records will show that.

Counsel for the trustee objects to this testimony.

Q. What have you had to do in attending to this suit?
A. Simply advising with the receiver as to his duties respecting his action as receiver.
Q. In what way?
A. I really have no control over him. I suppose he is acting under the advice of the court. I have nothing to do with him particularly.
Q. What did you have to do with instituting this suit?

Counsel for the trustee objects to the question, because the matter inquired about has been sworn to by attorneys in the case and because it has been proven up in the main case, and states that Mr. Blair retained Mr. Larned and himself in the case.

Mr. Reynolds objects to the statement of counsel for the
520 trustee as unprofessional in respect to the manner in which it is made.

The master overrules the objection. Exception taken.

A. I hadn't anything particularly to do with the institution of this suit.

Q. Did you have anything to do with the institution of this suit?

A. No, sir.

Q. Do you know when it was instituted?

A. Yes, sir; I believe I do.

Q. From whom do you know that?

A. From the counsel.

Q. They told you after they had started it?

A. I think they told me before they started it, or were talking about it at the time.

Q. Who employed the counsel?

A. I don't know. I think Mr. John I. Blair.

Q. You did not?

A. No, sir.

Q. You had nothing to do with employing them in any way?

A. No, sir.

Q. Have you taken any part in conducting this case at all?

A. No, sir.

Q. Have you any of the bonds on hand yet unissued?

A. I think there may be some; yes, sir.

Q. How many?

A. I cannot tell.

Q. I understand you to say when you delivered the bonds
521 to John I. Blair and Moses Taylor you did not give them any stock?

A. That is my recollection.

Q. You did not exchange them for any bonds of another issue?

A. I would not be certain about that; that I am confused about.

Q. You have had directions as to what to do in the case, about the progress of it, from John I. Blair, in regard to issuing these bonds, and so forth, I presume?

A. No, sir; I have had no particular direction as to issuing them.

Q. You have been in consultation with him?

A. Yes, sir; I have.

Q. You regarded his interest in the matter so far as you could?

A. Yes, sir.

Q. Have you any business with him?

A. No, sir.

Q. Are you not in the bank together?

A. Yes, sir.

Q. And you are his son?

A. Yes, sir.

Q. I understand you to have testified that your father lives some little distance from you—fifteen miles?

A. Yes, sir; that is true.

Q. Is he in any active business there except this bank business?

A. He is the most active man I know of in New Jersey.

522 Q. In what line?

A. Principally in banking and railroading.

Q. Has he more than this one bank?

A. That is all, in New Jersey.
Q. That is the only bank he is president of?

Counsel for the trustee objects to this testimony as immaterial. The master overrules the objection upon the promise of plaintiff's counsel to show its materiality hereafter. Exception taken.

A. Yes, sir.
Q. Is he the active manager of the affairs of that bank or a mere figure-head?

Same objection.

A. No, sir; he is by no means a figure-head; he has the active management of the bank, keeps the run of the bank and all business of the bank.
Q. Attends meetings of the board of directors?
A. Yes, sir.
Q. Is he consulted about all the affairs of it?
A. He is consulted about everything of interest in the bank.
Q. The vice-president is the figure-head, is he?
A. If there is any figure-head I suppose it is the vice-president.
523 Q. Who is the managing man of the bank, the president or vice-president? That is what I want to know.
A. The president and the cashier are the managers.
Q. Is the president of that bank or the vice-president the actual manager?
A. I should say the president was decidedly the manager of the bank. I do all I can, but still——
Q. How much of your time do you devote to the business of the bank? Are you there all the time?

Counsel for the trustee objects to this line of examination, and states that he shall refuse to pay the costs of anything in this cross-examination that does not bear on the direct examination.

A. I am there every day when I am at home.
Q. When your father is at home is he there every day?
A. When my father is in town he is at the bank.
Q. When *is he* where?
A. In the town.
Q. And the relations between you and your father are intimate as father and son and of gentlemen associated in business together?
524 A. Yes, sir.
Q. Do you know who drew up the second deed of trust under which you were made trustee?
A. No, sir.
Q. The one that has been foreclosed, I mean?
A. No, sir.
Q. Do you know where it was drawn up?
A. No, sir.

Q. Do you know whether it was drawn up in New Jersey or out here?

A. I could not state positively.

Q. Do you know whether it was drawn up under the direction of your father or out here, under the direction of the gentlemen here?

A. I don't know; I could not state.

Q. Have you any recollection about that?

A. None whatever.

Q. Did you hear it discussed before it was drawn up?

A. No, sir.

Q. I understood you to say in your examination awhile ago the matter of making this change of the bonds and the rate of interest had been discussed before it was done?

A. Probably it was discussed before it was done.

Q. Then the making of the new bonds and mortgage was discussed?

A. It must have been.

525 Q. And that was before the change was made—before the new mortgage was executed?

A. I presume so.

Q. You don't remember of discussing the terms of the new mortgage?

A. No, sir.

Q. Or the situation of the company?

A. No, sir.

Q. Do you remember what representations were made or the reason of changing the rate per mile from $20,000 to $12,000 per mile?

A. No, sir.

Q. Did you hear that discussed?

A. Not to my recollection.

Q. You have never had any particular interest in this, then, except as to the standing between the parties?

A. Ns, sir; I have had no interest whatever.

Q. You have had no interest in the suit whatever?

A. No, sir.

Q. Did you ever see the charter of the old company that sold to this company?

A. No, sir.

Q. Did you ever hear it discussed?

A. No, sir.

Q. Did you ever hear any of its terms or provisions discussed?

A. No, sir.

Q. Did you ever hear any discussion of the necessity of the old company signing that first mortgage?

526 A. I have — recollection of hearing anything concerning it.

Q. Do you remember whether or nor they did sign it?

A. I don't know.

Q. Do you remember whether the Missouri and Iowa Railway Construction Company signed it?

A. No, sir.
Q. Yet you say you read that mortgage over?
A. I presume if it was in the mortgage I must have read it.
Q. Who presented that mortgage to you for your signature?
A. I cannot say; I presume the president of the road.
Q. Have you the original mortgage?
A. I think I have, sir.
Q. Where?
A. I am not certain; I think it was given to one of the counsel in this case and he may have it.
Q. The first mortgage, I am speaking of?
A. I don't know, sir; I cannot tell where that is at present.
Q. The mortgage being foreclosed, of course you sent to your counsel?
A. Yes, sir.

527 Q. The mortgage that was first executed and in which you and Mitchell were trustees, was that ever in your custody?
A. It was at one time.

Q. What did you do with it?
A. I cannot tell what we did with it after we cancelled the mortgage, who would be the proper person to hold it.
Q. Do you remember giving it over to any one else?
A. I don't remember it; I remember of seeing it.
Q. I will ask you now to produce that mortgage.
A. I should have to hunt for it; I don't know where it is.
Q. You have no recollection of where it is or what became of it?
A. I have not now.

Redirect examination by Mr. CASE:

Q. I would like you to refresh your recollection about your connection with this suit. You are the De Witt C. Blair who is trustee in the suit?
A. I am.
Q. Were you not requested, as a matter of fact, by the bondholders to foreclose that mortgage?
A. Yes, sir.

528 Q. Did you or not authorize Mr. John I. Blair to act as your agent to employ counsel to institute that suit, and didn't you afterwards ratify the act of Mr. Blair as your agent in employing your counsel?

Plaintiff's counsel objects to the question as leading and suggestive and incompetent. Objection sustained; exception taken.

Q. You say you don't recollect of having anything to do with this suit. Isn't it a matter of fact that you came here to St. Louis and proved up the bonds in that case as trustee?
A. Yes, sir.
Q. Didn't you at that time state upon oath that you had authorized Mr. John I. Blair to employ Mr. Larned and myself to act as your counsel as trustee?

Plaintiff's counsel objects to the question as leading, suggestive, and incompetent. The master sustains the objection on the ground that the question is leading; exception taken.

Q. Did you give any testimony here at St. Louis in regard to the employment of counsel for youself in this suit?

Plaintiff's counsel object- to the question as incompetent. Objection overruled; exception taken.

529 A. Yes, sir; I did.
Q. What was that testimony?

Plaintiff's counsel objects to the question as irrelevant and incompetent. Objection sustained; exception taken.

Counsel for trustee states that he proposes to show by this witness that this witness authorized the employment of Mr. Larned and Mr. Case as his counsel to foreclose the mortgage against the St. Louis, Hannibal & Keokuk Railroad Company; that he ratified such employment, and that he came in person to St. Louis and proved up the amount of the bonds outstanding by that company and advised with counsel in regard to the progress of this suit.

The master states that he does not rule that counsel cannot prove up those facts by the witness, but that he must ask the question in proper form.

Q. What have you done or what have you authorized to be done in regard to the institution of this suit and the employment of counsel?

530 A. I have authorized counsel to proceed to defend all cases connected——

Q. I speak about the foreclosure of the mortgage.

A. Under the foreclosure of this mortgage I have authorized counsel to defend all suits in every case.

Q. You don't apprehend my question. What have you done in regard to authorizing counsel to foreclose the mortgage?

A. I have authorized and instructed counsel to forelose the mortgage.

Q. What counsel were they?

A. Mr. W. C. Larned, of Chicago, and Mr. Case, of St. Louis.

Q. Have you had any consultation with those counsel in regard to the foreclosure of this mortgage during the progress of the suit?

A. Yes, sir.

Q. What did you do with regard to proving up the bonds of the St. Louis, Hannibal & Keokuk Railroad Company which are secured by this mortgage being foreclosed?

Plaintiff's counsel objects to the question as irrelevant, incompetent, and immaterial. Objection overruled.

531 A. I authorized the foreclosure of the mortgage.
Q. What did you do with regard to proving them up?
A. I ordered them to prove them up.
Q. Did you prove them up yourself?

A. Yes, sir; I was here and proved them up.

By the MASTER:

Q. That is, you testified as to the correctness of the bonds when presented to you?
A. Yes, sir.

By Mr. REYNOLDS:

Q. You as trustee proved up the bonds?
A. I proved up the bonds.
Q. Were you the owner of them?
A. No, sir.
Q. The holder of them?
A. Yes, sir.
Q. Of how many?
A. I have forgotten the amount.
Q. Can you approximate it?
A. No, sir; I cannot.
Q. Are you still the holder of them?
A. They are all here.
Q. Put here by you?
A. Yes, sir; brought here by me.
Q. All the bonds that have been proved up?
A. All the bonds that have been proved up are here, deposited in the hands of the master.
Q. And were so done by you?
532 A. Yes, sir; I brought them here from New York.
Q. Who did you get them from?
A. From Moses Taylor's estate and John I. Blair.
Q. And you came out then and proved up the indebtedness?
A. I brought the bonds out here and proved up the bonds.
Q. You proved up the indebtedness against an estate that you had brought into court as trustee and was closing out yourself?
A. Yes, sir; I mean to say I produced all the——

By the MASTER:

Q. The bonds were handed to you as trustee and you produced them before the master and verified them?
A. That is what I meant to say.

By Mr. REYNOLDS:

Q. What interest have you in those bonds?
A. Not any, personally, in the bonds. I don't own any bonds.
Q. What interest has the bank in those bonds?
A. No direct interest that I know of.
Q. What indirect interest?
A. None, unless it might be as collateral; it may have held
533 some as collateral.
Q. How many does your bank hold as collateral?
A. If any, some thirty or forty.
Q. Did you prove them up in the name of the bank?

A. I suppose so. I can't remember. The records will show.
Q. In point of fact the bank had some as collateral?
A. Probably.
Q. And have some yet?
A. Probably
Q. And is still interested in the outcome of this suit?
A. The record will show.
Q. I ask you for the fact.
A. Whatever I proved them up for I stated at that time.

Signature waived.

534 *John I. Blair's Testimony.*

JOHN I. BLAIR, being duly sworn, testifies as follows:

Direct examination by Mr. CASE:

Q. Where do you reside?
A. At Blairstown, New Jersey.
Q. What is your business?
A. If you would ask me what business I was not in I might tell you, but when you ask me what business I am in it is pretty hard to tell you. I am a director of sixteen full railroads besides being president of a bank, and I am largely interested in a large iron mill at Scranton and have been for a great many years, and in a large number of furnaces *furnaces* in New Jersey and nail works in New Jersey. I have been president of the Belvidere Bank for fifty-five years, to start with, and many other corporations throughout the country.
Q. What connection have you now or did you have with the St. Louis, Hannibal & Keokuk Railroad Company?
A. The St. Louis, Hannibal & Keokuk Railroad Company, or at least the officers of that company, called on us to sell them
535 some rails for its road.
Q. Who do you mean by us?
A. Called on our company, the Lackawanna Iron and Coal Company; they generally called on me.
Q. Can you recollect the time?
A. It was about the time they undertook to build the first part of the road.
Q. Called on you to sell them some railroad iron?
A. Called on the company in the first place. I think they made application to me as a director, being out West, and Mr. Taylor was president of the company in New York.
Q. Did the company accede to their request?
A. We did at last, and they showed us at the time that they had subscriptions, large subscriptions; some $490,000 of good men that day were subscribers to a contracting company, they said. They had taken the contract. The fact is they were directors of the road as well as the construction company mainly to build the

road, and they had certificates of a large amount of county
536 bonds that would be given them if they would build the road. They appeared to be very good.

Q. Did they offer those as security?

A. Then they proposed to give us the bonds. They proposed to give us the note of the company; I think the note.

Q. The note of the railroad company?

A. The note of the railroad company, or give us bonds, and the construction company was to give us a certain portion of the bonds. I forget the amount, whether it was $20,000 to the mile; whether they would give us $10,000 or $20,000 to the mile. At that time everything was up. They told an excellent story. We sold them iron and took a portion of the bonds as collateral security. That was the first mortgage given, $20,000 to the mile, and they were entitled to $20,000 of bonds whenever they built a mile; and if they built five miles they would have $100,000 on the sworn testimony of the engineer. In that mortgage they wanted a trustee for the mortgage, and of course we
537 wanted to know who the trustee would be. They proposed some men West, and we were dissatisfied with that. We wanted some bank in the East to go in as trustee, and they would not agree to it. Then the Farmers' Loan & Trust Company were requested, and they charged something, and they did not like that. Then they asked us if we would be satisfied with George Clarence Mitchell, son of George W. Mitchell, a wealthy man, and whether I would permit my son to act as trustee. That mortgage was made when they built ten miles or whatever it was. The proper officers of the company signed it just as far as they built.

Q. Signed what—certificates?

A. Executed the mortgage. Then, after that mortgage was recorded, after they had signed it and built the ten miles, the trustee was called in to sign the mortgage and these bonds. All these bonds in blank form were really to be put into the hands of the
538 trustees; not exactly that, but to be deposited in the City National Bank in blank, so they could not put them to any other use. The only reason they put them there was so the coupons could not be cut off. Every bond that was printed was put there, and whenever ten miles was built they had to come down and sign the bonds.

Q. What became of the bonds issued to you under the first mortgage?

A. The county bonds? The way the debt came to accumulate so much was they could not get county bonds. The county bonds of one county they could not get until they built to the county line, this side of Bowling Green. The first bonds—they built some other line. They spent them in paying salaries, and they said they went into the road. The other bonds they could not get until they built to a certain county line, and they were forever doing that. It went on and on and on and on. They said as soon as they got to the line they would get the bonds

and give them to us and it would pay us handsomely.
539 They got to Bowling Green and then we looked for the bonds, and they said: "We can't get them yet; we have to get to the line, three miles further on." We had done all we could. Then they wanted to raise money or something to build the three miles. We were stuck in the thing, and what to do we didn't know. I agreed, and Mr. Taylor said he would agree, but he didn't do it, that we would furnish the money to buy the materials and divide the responsibility. George Douglas, whom I knew to be worth $100,000. I know I relied on Douglas, and Mr. Green was endorser and Judge Wisner. We had those men, which was amply sufficient, you know. The discount was made from time to time of different notes to buy iron and buy materials to get the three miles. In addition to these, they had the bonds of themselves.

Q. What bank made the discounts?

A. The Belvidere Bank. The first money they got at Cedar Rapids, but the Belvidere Bank made the discounts event-
540 ually. We did it on endorsements. The Belvidere Bank never had one of the bonds. The bonds were in the city of New York. I held the bonds for Moses Taylor for our protection and their protection, too, because they were hypothecating bonds, because individually they were liable.

By Mr. REYNOLDS:

Q. I did not have the advantage of hearing you start with your testimony. To what period of time are you referring?

A. To the first-mortgage bonds first issued.

Q. In 1872?

A. Yes, sir. Then they had an offer when they got to this point that they would get the county bonds and they would sell. They borrowed money. They had good names. They had a subscription of $490,000. Meeker was a $50,000 signer also. He was the president of the Joliet Iron Company, and the man was rated to be worth half a million dollars. It all looked well. When they got to the county line they would have the bonds, and
541 they had a market for them and was going to sell them. When we got to the county line we were a long time, and the next thing was a depot; that if they built a depot they could get them. In the mean time so it stood. Then there was an Englishman came over and he looked over the matter and he agreed to buy the bonds at seventy-five cents on the dollar, or whatever it was, but this was it, that they must have a sterling bond and they must have the Farmers' Loan & Trust Company as trustee, which was known in England, and if they made them the trustee, somebody they could depend on, you could get the cash. It might be two or three years before that came in. In the meantime our debt was running on and running on. They got out the bonds at last and the Englishman came over and he took a lot of bonds to England, but he did not succeed in disposing of them, for it was tight times. Another Englishman was going to come over, but he
542 didn't come, and it ran along and along and it failed. We had

a responsible man in New York who said, "If you will make it a $12,000 bond instead of a $20,000 bond I will sell those bonds." We said, Very well; a $12,000 bond was just as good as a $20,000 bond, because the $20,000 bond ought not to be given on the road, the way things were coming. They said, "We will do that." It looked as if they would sell that, and I thought so. The result was then to get up the bonds, and the first bonds must be given up, and we had to show there was no debt on it. They did show there was no judgment whatever, but there might be a judgment against the contracting company. They brought certificates to show it. We said we would do it if you can show you have no debt. The bonds were all cancelled. Then for the $12,000 mortgage they proposed somebody for trustee, somebody out West, who Mr. Taylor and I objected to. He was one of the directors of the Farmers' Loan & Trust Company, but the
543 Farmers' Loan & Trust Company had charged the company one dollar for signing the bonds and one dollar for cancelling them. They would not cancel them and they had to pay a dollar to get them cancelled. The company objected to this expense. They proposed it, I think, eventually. They wanted my son, and we agreed we would take him. There was no particular agreement with him about it. We agreed we would be satisfied with my son being trustee and the whole of the bonds be left at the City Bank. The result was they burned up all the bonds. The United States Warehouse Company had a lot of bonds, don't you see? They got up everything but the warehouse bonds, and they would not give them up. They passed a resolution that the warehouse company should have a lot more bonds, and they got $5,000 or $6,000 more bonds than they were entitled to. Mr. Taylor and I had to give up
544 bonds to the warehouse company, and by that mode those were cancelled. Then came in the $12,000 bonds. They had the $12,000 bonds and they had men that would take them. They had been running so long and we agreed about the county bonds, and I came out to look over the road myself, and I saw the road they had built was not worth anything—not at all. It was not even built. They seemed not to have a side track or anything on it to do business. I looked over it and said to Mr. Taylor——

Mr. Reynolds objects to the witness stating the conversation.

The WITNESS: I will not say that I said it was not worth the iron that was in it. It looked, unless the road was extended across, it might be worth something, because the business came to St. Louis if it was extended across to the Wabash road. I looked over the thing and thought——

Mr. Reynolds objects to the witness stating what he thought.

The WITNESS: You had better have all the facts out. I
545 want to tell you what the inducement was and how this thing came. There was a lot of grading done, and they got county bonds and sold them for the grading done at this end. It turned out that Mr. Walker was assured that if we let them have not over—at first they were going to build the whole road for

$150,000, and then it got to be $250,000, and we gave the money. When that money was gone it was not half done, and instead of building it one year it poked along two or three years from the time it commenced, and the road was finished up in the shape it was. When he got done a broker undertook to sell some of the bonds and fifteen or twenty bonds were sold, and his price was ninety cents for the bonds, and unfortunately he went into speculation, and so the broker and we bursted up. Then we had another broker who was trying to sell, and I didn't know but he would do it. The first information I got was Mr. Walker came to New York, and came to me
546 and said, "I am tired about the road." I said, "What is up?" "Well, we want to settle." We came up and made a settlement of all the cash we had let them have from time to time and time to time—vouchers—and had everything satisfied, and the result was that the bonds at par would not pay us by forty-odd thousand dollars. Then they had no rolling stock. Then we furnished $30,000 or $40,000 of rolling stock, so as to stock it up; bought the rolling stock for cash, right down to the pink. He was going to do something every month, pay something every month, and he never done anything. The next thing he came and said to me, "You had better have a receiver for the road." I said, "What is up?" "It is on the Wabash road. They have shut me off. We are three miles from their depot." "I thought you owned there?" He said, "No; only outside three miles." "What did they shut you off for?" He said they claimed they had not been paid for running over the road, and the road was stopped. The passengers
547 would not go out three miles.

By the MASTER:

Q. That was at the city of Hannibal?

A. Yes, sir. Then I learned they could not run the road; that your railroad commissioner had condemned the road, and it was not safe, and Mr. Walker, I found, had not paid the workmen on the road, and then I went to the cashier about it. Mr. Walker looked over the road, and he just came back, and he wanted to be trustee.

Mr. Reynolds objects to this testimony.

The WITNESS: I went back to Hannibal to see a little more about it, and I saw the cashier and manager there, and I wanted to know where Mr. Walker was, and he said he had gone to California; he had about $1,400 in money and went off with it. That is that. Then I had to come here and apply for a receiver, and had to make arrangements to get into Hannibal with the railroad.

By Mr. CASE:

Q. Did you, as the principal bondholder, request the trus-
548 tee to institute proceedings to foreclose the mortgage?

A. Yes, sir; I requested my son to use his name to foreclose the mortgage—Mr. Taylor and I.

Q. Did your son, as trustee, give you any instructions what to do,

or request you to do anything towards bringing about a foreclosure?

Mr. Reynolds objects to the question as irrelevant and incompetent. Objection overruled; plaintiff Fogg excepts.

A. I, as bondholder, requested him to foreclose the mortgage.

Mr. Reynolds objects to the answer. Objection overruled; plaintiff Fogg excepts.

Q. Then what did you do?
A. He acted under my instructions; gave consent to do it.
Q. What, if anything, was done by you in pursuance of his instructions, to bring about a foreclosure?

Mr. Reynolds objects to the question as incompetent. Objection overruled; plaintiff Fogg excepts.

549 A. Now, I says, we will employ lawyers ourselves and agree what price we will give them. We will take Walter C. Larned and Mr. Case. They had been the attorneys in two roads we had foreclosed, and I was not going to allow the trustee to get a man that would charge us $50,000 or a large sum.
Q. Did you at the instance of the trustee place the mortgage in the hands of Mr. Larned and Mr. Case to foreclose?

Mr. Reynolds objects to the question as leading and suggestive. Objection overruled.

A. Yes, sir; I informed him about it, what was necessary to be done. I gave him advice as to what was necessary to be done, and, of course, he said yes. That was all. We were the bondholders.
Q. Did he authorize you to go ahead and do it?
A. Yes, sir.
Q. Use his name as trustee?
A. Yes, sir.
Q. And employ counsel?
A. Yes, sir; he knew counsel was employed. I called on him.
Q. Did the trustee come with you from New York and bring the bonds.

Mr. Reynolds objects to the question as leading. Objection sustained.

550 Q. Who came out from New York and brought the bonds?
A. D. C. Blair, the trustee. We were willing to trust him to bring the bonds. There was a tremendous load of them. I recollect I brought some scattering few. I generally trusted all bonds to him.
Q. What did he do with those bonds?
A. When I came here I found them here. I believe he brought them here. I saw them as far as Chicago.
Q. When did you first learn of the claim of Josiah Fogg?
A. After this foreclosure Mr. Walker told me there we no debts

against the company at all, except something to do with the laborers; nothing on the right of way.

Mr. Garesche objects to this testimony as incompetent, irrelevant, and hearsay. Objection overruled; plaintiff Fogg excepts.

The WITNESS: He said his company owed some money—the contracting company. He informed me that there was no claim against the company, but some man I recollect—I don't recollect the
551 name, but there was some suit of some man who was a former contractor who bursted all up, and it was very unjust.

Mr. Reynolds objects to this testimony.

Q. When was this?

A. This was after we got the receiver.

Q. Was that the first intimation you had of any claim of Mr. Fogg?

A. Yes, sir; the first intimation. I wanted to know where the debt was. I found there were no debts on the road, but there were outside debts owed by the contracting company.

Q. Did you ever examine the books, or did Mr. Walker ever submit the books of the company to you showing what was on the record?

A. Never; never. I never saw his book of records. I do not know what they did. When they had anything to do they came to New York with some paper, and Mr. Taylor was a lawyer, and then they looked to see if it was correct, and, if it was correct, he did it. When my son was there, if it was correct, the lawyer said to sign it. He only signed as trustee when they brought certificates.
552 We knew nothing about the business.

Q. Did you know anything of the St. Louis, Hannibal & Keokuk Railroad Company's matters other than the mortgage on which you loaned the money?

A. That is all I knew anything about. It was the iron company, an application to them, and they were unable to talk, and we were large stockholders and had to do it.

Q. Stockholders in what?

A. In the iron company. They were selling iron on credit, and we had frequently to take the notes and securities to give them the money. Somebody had to do it. You must recollect that, except once, the year I was over the road, except the time I came out and looked over the road the last time——

Q. When was that?

A. That was when they undertook to build the last forty miles. Once before I was there and saw it was good for nothing unless this was built. I all the time expected they would sell it. This good man in Chicago, he bursted up. If it is pursued rightly
553 we will find there is money coming to the construction company. Meeker is rich.

Q. Did you loan money to the company and take bonds?

A. This was for iron and other moneys we let them have to build this end of the road. I will tell you another thing. I paid for one hundred and fifty thousand ties. I think that is about the amount

that we had vouchers to show, and we sent a man over the road, and they never put but eighty thousand of them in the railroad, and every other one must have been sold. I believe Walker did that. The note at the Belvidere Bank they took up bonds—Mr. Douglas was going to sue on it. They got some bonds, and I think they paid it out of the earnings of the road or sale of our ties. They were not entitled to the thirty-three bonds they got.

Mr. Garesche objects to this answer of the witness.

The WITNESS: The bonds we have to-day will not pay us by $60,000. If you want to buy them Mr. Taylor, I think, will
554 sell you his bonds at fifteen cents on the dollar. It is a good passable road now.

Cross-examination by Mr. REYNOLDS:

Q. I got in so that I did not hear the first part of your testimony. What county bonds were those that you were speaking of that were coming for the construction of the road?

A. It is that county this side of Bowling Green.

Q. Ralls?

A. The bonds were on the road east of Bowling Green. The county line is three miles this side of Bowling Green. There were $190,000 of bonds. I put up the depot to get the bonds and then they told me they thought it was outlawed.

Q. That is Ralls county. You are speaking of the Pike county bonds?

Counsel for the trustee objects to any examination into the question of county bonds.

Q. Do you remember the fact of your having for yourself, and on behalf of Moses Taylor, entered into a contract in 1878, in May of that year, for the construction of a part of the railroad, for ironing part of it?

555 A. 1878? That would be seven years ago. That might have been the last of it.

Q. That is not the last one. I will tell you. The last one was in 1881.

A. I do not recollect what it is; very probably the-e was something there.

Q. I will read you part of it from the records of the St. Louis, Hannibal & Keokuk Railroad Company, from page 126 of the record, for the mere purpose of calling your attention to the contract I am asking you about. It is an arrangement negotiated by the St. Louis, Hannibal & Keokuk Railroad Company with John I. Blair, for himself and Moses Taylor: "Whereas the St. Louis, Hannibal & Keokuk Railroad Company have constructed their road from Hannibal to Bowling Green or thereabouts, in the State of Missouri, a distance of about thirty-one miles, and are now operating the same, and have issued bonds, secured by mortgage on the same, at the rate of twenty

thousand dollars per mile on main line, to the amount now
556 outstanding of six hundred and twenty thousand dollars, and it is deemed desirable to extend the road from its present terminus to Prairieville, in Pike county, Missouri, to the end that the road already in use may be made more valuable and the interests of the company and its bondholders subserved, and where so extended the said company will be entitled to receive from the county of Pike certain of its bonds, amounting to $199,500, face value, or thereabouts, according to the vote and agreement of said county, to aid said company in the construction or extension of said railroad, and the said company is fully able to complete said road from its present terminus to Prairieville aforesaid if they can procure the iron rail, spikes, splices, bolts, and nuts delivered at Hannibal, and John I. Blair and Moses Taylor, hereinafter named, upon certain terms and conditions, being willing to advance the
557 necessary money, not exceeding $30,000, by purchasing for said company the said iron rails, spikes, splices, bolts, and nuts, which it is represented by the company can be produced at the most advantageous prices for cash, the iron rails at Springfield, Illinois, and the bolts, spikes, splices, and nuts at St. Louis, Missouri." I ask you if that contract of which that is the preamble is the one which you have referred to.

Counsel for the trustee objects to this as not being the proper way to ask a question. Objection overruled; plaintiff excepts.

A. To reach the county line?

Q. That is the contract you have referred to.

A. That would seem to be the substance of it. I presume the real contract was in New York.

Q. It was a contract substantially to that effect?

A. I have stated how we were compelled to make the last loan to reach the county line.

Q. To secure the subscription?

A. Yes, sir.

558 Q. This is the one you are referring to under which you advanced money?

A. That and the bonds; that was additional security, they said.

Q. That purports to have been made in May, 1878?

A. I do not recollect the date.

Q. Had you had dealings with the company before that time?

A. Yes; we had furnished iron before that time pretty much to reach that point.

Q. To whom did you furnish the iron?

A. I think the St. Louis, Hannibal & Keokuk Railroad Company; either that or the construction company.

Q. Was it not the Missouri & Iowa Railway Construction Company?

A. I will not say about that. If we furnished them we had the St. Louis, Hannibal & Keokuk Company's paper, and they were securities; something in that shape.

Q. They were both connected in it?

A. Yes, sir.

Q. When you first knew the St. Louis, Hannibal & Keokuk Railroad Company were you not informed of the existence of a
559 contract for the construction of its railroad between that railroad company and the Missouri & Iowa Railway Construction Company?

A. I probably was; that they were going to make up a contracting company to build a railroad. They wanted the iron, with bonds for collateral security, but we helped them on from that point. What they got undoubtedly was to go to the end of the forty miles, to the county line.

Q. That was when you came in the second time?

A. We helped them so far, and the money was gone and the securities; they had been so long at it. Then there was an additional security.

Q. You had had dealings with them before that?

A. Yes, sir; they had had iron before that.

Q. They had iron from you?

A. Or money to buy iron with.

Q. Under the contract with you and Moses Taylor?

A. Yes, sir; I suppose so.

Q. That contract was made between you and Moses Taylor on the one side and the Missouri and Iowa Railway Construc-
560 tion Company on the other?

A. Yes, sir.

Q. All three together?

A. Yes, sir.

Q. That was made in 1872 or 1873?

A. Yes, sir; must have been at that time.

Q. Do you know who were the officers of the Missouri & Iowa Railway Construction Company at that time?

A. The money they gave us that had been subscribed for was Mr. Meeker, president of the Joliet Iron Company, $50,000.

Q. In the Missouri & Iowa Railway Construction Company?

A. Yes, sir; Mr. Wrenn, a rich broker, $10,000; George Douglas, $25,000, and he was $100,000 man. He was a rich man. The Greens were in. Judge Green was a very prominent man, a great railroad builder. He had been building largely. Judge Green and his brother were in for $75,000 or $100,000, and Dr. Ely, and he had some brothers up in Marquette. They were large subscribers, not less than $75,000 or $100,000; that is my recollection. Mr. Walker was in for $25,000.

Q. William W. Walker?

A. Yes, sir; he was a man I knew at one time that was
561 worth a great deal of money, and I presume he is now, but his wife owns it. The subscriptions, to the amount of $490,000, appeared to be good, reliable men.

Q. The subscriptions to the construction company?

A. Yes, sir.

Q. Do you know how long before that the Missouri & Iowa Railway Construction Company first took hold of the road?

A. No, sir.

Q. Do you know whether they had done any work on there before this?

A. I have learned here since there was trouble about it; that some other company had bursted up in the thing—undertook to build and broke down.

Q. Some other contractors?

A. Yes, sir.

Q. When you learned that — was the time you learned about Mr. Fogg?

A. No; that must have been in seventy-odd.

Q. When you learned that some other contractors had undertaken to build it and had burst up in it — was the time you learned about Mr. Fogg?

A. No; I heard—yes; previously; it might have been when I came out last year that some other company had undertaken to build it and had bursted up.

562 Q. When was it you heard that?

A. I cannot say, but I think it was something previous to my getting the receiver.

Q. When you made the contract with them for extending the road through Pike county to Prairieville you stipulated in that contract that you were to have the bonds that Pike county had subscribed?

A. Yes, sir; for the $30,000. To reach there we were to have a lien on the bonds or they would sell the bonds and pay us off.

Q. Out of the proceeds of the bonds?

A. Yes, sir.

Q. The right to the subscription was to stand as security to you for the payment of the money you advanced?

A. They had the good names I have shown, but we had the bonds in addition. We held the first bonds, maybe thirty-seven miles. They built thirty-seven miles, I think; it was forty miles to reach the line.

Q. Did you ever look into the subscription of the county?

A. Never, never; not at all. I knew nothing about it.

563 Q. You did not know they had a subscription?

A. They said they had it.

Q. Did you ever look into the matter to see if they had a subscription from the county?

A. I did not.

Q. You knew they claimed to have subscriptions?

A. Of course they said they had.

Q. Did you ever look into it to see whether they had or not?

A. No, sir; I considered those names.

Q. The names in the construction company?

A. Yes, sir; the money they had, and if they would pay the subscription, up, the bonds they had, and a good road. I knew there was no road to get to St. Louis unless they went forty miles around.

Q. What bonds did you mean?

A. The bonds on the thirty-seven miles first made.

Q. Where did you get them from?
A. From the company.
Q. What company?
A. It was the officers and the contracting company. Those folks gave them to us as collateral.
Q. You got them from the old company?
564 A. I got them from the first company.
Q. From the old company—the first railroad company mortgage?
A. The first part they built, the bonds were on that.
Q. The bonds issued by the old company on that?
A. Yes, sir.
Q. That was where you got them from?
A. Yes, sir.
Q. Those were bonds issued by the St. Louis & Keokuk Railroad Company?
A. Yes, sir.
Q. When you made the contract—the first contract you said you made?
A. We never had any bonds except St. Louis, Hannibal & Keokuk bonds.
Q. At whose instance did you collect that?
A. Sometimes when I am speaking of the bonds I call them Hannibal & Keokuk.
Q. You made that correction at the suggestion of Judge Dimmitt?
A. No, sir; not at all.
Q. You heard his suggestion to your attorney, did you not?
A. I didn't.
Q. You got the suggestion from your attorney?
A. I oftentimes call it the Hannibal road, the St. Louis & Hannibal road. I suppose it is understood if I would call it
565 that thing I would call it here so.
Q. You knew the old company, the St. Louis & Keokuk Company, built the first part?
A. I didn't know the name of the old company.
Q. You knew there was an old company?
A. No; I supposed it was this company.
Q. You always supposed it was this company?
A. Yes, sir.
Q. Didn't you say the old company bursted up?
A. The old contracting company bursted up.
Q. Did you know they were with the old railroad company?
A. I heard somebody graded on the road before Mr. Walker and those other folks undertook to build the road.
Q. You heard that?
A. Yes, sir; sometime before I had the receiver.
Q. Didn't you hear it the first time that you went into your negotiations with the St. Louis, Hannibal & Keokuk Railroad Company that they were building on an extension of another company?
A. No, sir; I have no recollection of it whatever.

Q. Did you not know that the bonds voted by Pike county were voted to the St. Louis & Keokuk Railroad Company?

A. No; I supposed they were voted to this company.

566 Q. You never looked into that?

A. No, sir.

Q. You knew there were bonds that came from Ralls county?

A. Which county is that?

Q. New London is the county seat of it—the county next to Hannibal.

A. They named various counties that had voted them bonds; what counties they were I didn't know.

Q. Did you not know that those bonds were voted to the St. Louis & Keokuk Railroad Company?

A. No, sir.

Q. You never inquired about that?

A. No, sir.

Q. You just chose to take their word about it?

A. I thought they were good men and they would give us bonds as collateral security. The men I knew to be wealthy men, and the debt was not large, and the added $20,000 of bonds would sell, and no road to go to St. Louis except going forty miles around.

Q. How did you know the Missouri & Iowa Construction Company had — to do with this?

A. I suppose I was informed at the time. The Iowa Railroad Company?

567 Q. The Missouri & Iowa Railway Construction Company.

A. I knew Mr. Walker had such a company.

Q. How did you know they had such a contract?

A. I took their word for it.

Q. You did not look at any papers?

A. No, sir.

Q. You did not know under what circumstances they went in there?

A. No, sir; I didn't know that.

Q. Did you ever look?

A. No, sir.

Q. Did you ever look at the books of the company?

A. No, sir.

Q. You never saw the records?

A. No, sir.

Q. And you never inquired?

A. No; I don't know that I ever inquired about it.

Q. Yet you had been dealing with the company ever since 1873?

A. Yes, sir; but only three operations: The first thing to sell them some iron for thirty-seven miles and then they were going to have bonds and pay us all off, and when we got into the pinch, if they only got three miles further, then we were to have county bonds.

Q. Did you ever see any of the county bonds?

A. No, sir.

568 Q. Did you ever see any county bonds issued by Ralls county?

A. No; I never saw a bond of them.

Q. Or issued by the county of Lincoln?

A. No; I never saw any of them.

Q. And yet you were dealing pretty largely with the company and never inquired about the railroad?

A. Not at all. I took what they said they had. They said they had a large amount of county bonds and, in the meantime, those were wealthy men that had made the subscriptions. They gave us part of the bonds they had. Judge Green was building railroads by the hundred miles, Mr. Meeker was president of an iron company, and Mr. Douglas was another rich man. I knew them. They gave the paper.

Q. That was when you went in there first?

A. Yes, sir; I saw the subscriptions.

Q. When did you first hear that the St. Louis & Keokuk Railroad Company had been the original chartered company for this road?

A. The St. Louis, Hannibal & Keokuk?

Q. Now the St. Louis & Keokuk—the old company.

569 A. I never heard anything about it. You are giving me a name I never heard before. I supposed this was the original company. I never talked about the thing at all.

Q. You knew the same men had been in charge of it all the time—of the construction from its inception?

A. I supposed so until I heard there had been another company that had done work and bursted up before they took it.

Q. Another company?

A. Another set of men.

Q. Another construction company?

A. Yes, sir.

Q. That was the John S. Wolffe contract?

A. I don't know about that.

Q. You do not remember the name even?

A. No; I heard it was another company that the gentleman was making a claim on—that was the time we came to inquire about things—that another construction company had bursted up. I asked Mr. Walker about it, what it meant, where this debt was.

Q. The Fogg debt?

A. Yes, sir; they all said it was a former construction com-

570 pany that had bursted up. It was Fogg. He was one of the original contractors.

Q. One of the original contractors and was a fraud?

A. That is what he said when I came to inquire, and wanted to know what the debt of the company was, where this money was gone—"You said you owed nothing." He said, "It is gone." "I want to know what the railroad company owes—the St. Louis, Hannibal & Keokuk Railroad Company;" and he said, "We don't owe anything except we owe the men."

Q. Was that before Mr. Fogg recovered his judgment?

A. I don't know about his judgment.

Q. He had not recovered his judgment then?

A. I don't know. They said a man named Fogg had been lawing about it, and that — was a debt the railroad company had nothing to do with.

Q. That was the construction company?

A. Yes, sir; if they owed anything, but they didn't owe anything.

Q. How long ago was that?

571 A. It was a short time—just a short time before I got the receiver—two or three months before.

Q. Was it not at your visit before you got the receiver appointed?

A. Yes, sir; that was a very short time.

Q. That was along in September or October?

A. It might have been November or December. He had given me notice that he wanted to be receiver, that he could not do any work any more.

Q. What year was that?

A. It was in 1883—a short time before that. I didn't know what to do about it; the whole thing was broken down.

Q. Did not Mr. Walker tell you that this man Fogg had gotten his judgment against the old company?

A. No, sir.

Q. He didn't tell you that?

A. No; I suppose the fact was that Mr. Walker had lied so much about the debts, and he wanted to keep everything from me—not let me know anything about it.

Q. And you made no inquiry?

572 A. He all the time told me he didn't owe anything to the men, that he was paying them. I supposed he was. I didn't come here.

Q. I would like you to explain in your testimony what inquiry you made when you originally made the contract for furnishing iron, or money to purchase iron with, in 1873 with the Missouri & Iowa Railway Construction Company as to the contract that company had, if any.

A. I think the application the gentlemen made to the iron company through Mr. Taylor and me was to buy for the St. Louis, Hannibal & Keokuk Railroad Company; that they wanted to pay for it with bonds. They showed us they wanted to sell the bonds first, and they showed what they were going to do. I very well recollect there was no road here for forty miles. They showed the men in the company——

Q. In the construction company?

A. In the construction company. It turned out to be so, whether the construction company or the St. Louis, Hannibal &

573 Keokuk Railroad Company, but it was bonds they wanted to sell of the railroad company.

Q. What inquiry did you make as to the right the construction company had to negotiate for bonds of the railroad company?

A. I don't know that I made any.

Q. You made no inquiry?

A. I made no inquiry.

Q. You were informed they had county subscriptions?
A. They came and stated they had a large vote in the county.
Q. In the different counties they ran through?
A. In the different counties they ran through—large subscriptions of county bonds; that they were going to have a large quantity of county bonds from rich counties, and all these things. I knew by the map that the road would be valuable, provided no other road was built at that time.
Q. You went in, then, on their representations without looking farther?
A. Certainly, because here was the subscription.
Q. You looked at the subscription?

A. Yes; I looked at the subscription and looked at the
574 bonds they were going to give us as collateral security.

Q. What bonds they were going to use as collateral?
A. The bonds they were going to issue—$20,000.

By Mr. CASE:

Q. Whom do you mean, the railroad company?
A. The St. Louis, Hannibal & Keokuk Railroad Company—their bonds.

By Mr. REYNOLDS.

Q. You read what was recited in them and in the mortgage?
A. I didn't see the bonds or mortgage at that time.
Q. You saw them before you parted with any money?
A. Before I furnished any money on the first bonds?
Q. Yes.
A. I suppose after they said they would build so much road and then they would give us some bonds. I wouldn't say we got any bonds until they built some road. The bonds, before being signed, were deposited.
Q. Who was the trustee under the first mortgage?
A. The trustee was D. C. Blair, and Clarence G. Mitchell was trustee.
Q. How did they happen to be trustees?

575 Mr. Case objects to the question.

A. I have stated that already—the way they happened to be trustees. The gentlemen proposed in the mortgage that was to be given to take some Western men, and we objected to that. We wanted somebody in New York. I think they tried Mr. Taylor—some bank with him, and they were unwilling to act. Then they were recommended to the trust company, and they made a charge, and they didn't want to pay it. Then they wanted some other man in New York, to be satisfied, and they proposed my son. I rather objected to taking my son, but took him and Clarence G. Mitchell, who was a son-in-law of mine, a man well off. Mr. Taylor and I consented that they might be trustees.
Q. They had bonds issued before that?
A. I don't know.

Q. I understood you to say in your direct examination that in their experience in settling with the former trustees they charged a dollar a bond for cancelling them?

576 A. That was the second bond—the sterling bond given to the trust company to be sold in England. The only bonds were the bonds given to them as trustees.

Q. You didn't know of any bond issued before that?

A. Never, never.

Q. Is it not a fact they told you they did not want to have them as trustee because they would charge them a dollar a bond, and therefore wanted somebody else as trustee, and therefore took your son and Mr. Mitchell?

A. That is so; they wanted to avoid that.

Q. They had the experience of that?

A. I don't know.

Q. I thought you said they had to pay that?

A. I said they would have to pay them a dollar a bond, and they did not want to do that. That was before these men were appointed.

Q. Is it not a fact that some bonds had been issued by the company or by one of the companies before the mortgage was given in which De Witt C. Blair and Mr. Mitchell were trustees, and didn't you have some of them?

577 A. No, sir; never one of them. I didn't hear of a bond issued before.

Q. You never heard of that before?

A. No, sir.

Q. You never heard the old company had issued bonds?

A. No, sir.

Q. Did you look to see if they had?

A. No; they never told me; I didn't expect anything of the kind.

Q. You did not hear any intimation of that kind?

A. No, and this is the first intimation from you.

Q. The first bonds ever put on the railroad were the ones issued under the mortgage in which De Witt C. Blair and Mr. Mitchell were trustees?

A. Yes, sir.

Q. You went over the road before that?

A. No, sir.

Q. Did you see it?

A. No, sir.

Q. Do you know whether they had any railroad then constructed?

A. No, sir.

Q. Did they inform you?

A. They said they were going to work at it. I think they told me they had done considerable work and wanted to issue a mortgage.

Q. Did they not tell you the only bonds they had that they

580 could put up were the Pike county bonds; that they had used up the Ralls and Lincoln county bonds before that?

A. Not a word.

Q. Didn't you make any inquiry when you were looking up the Pike county bonds, which were never issued?

A. That was the last thirty miles.

Q. When you were taking the Pike county subscription of bonds never issued?

A. We didn't get them. It was only the agreement they would give them as collateral.

Q. When you were taking them, do you mean to say that you did not inquire whether the bonds already subscribed and issued had been exhausted?

A. No, sir.

Q. You did not know that the Ralls county bonds had been issued?

A. No, sir.

Q. You didn't know anything about that?

A. No.

Q. You made no inquiry about it?

A. No, sir.

Q. Is that the way you do your business?

581 A. Yes, sir. If you would come here to-day and tell me that this man and that man were going into an enterprise, and they were worth $100,000 apiece, and were going to carry this thing on, we would rely on it.

Q. That is the way you did in this case?

A. Yes, sir.

Q. You made no investigation?

A. No, sir.

Q. You shut your eyes and went in?

A. Went in on the representations of the men—what they said; that they had done work on the road and all they wanted was iron, and they wanted to make a mortgage and buy iron. I believe they went to other companies; that they were going to sell bonds if they could only get the iron. In building railroads and crediting railroads we look at the men's character who are going to carry the enterprise through. If we see a man worth $100,000 and president of a rolling mill we think they are going to carry it through, and when we know that, that is all we ask about it.

Q. How much stock have you in this company?

582 A. I forget the amount that Mr. Taylor and I have—some $400,000; that was stock we required them to put up, that they said they had earned on the road they built up.

Q. Who had?

A. Mr. Walker and his associates.

Q. The railroad company?

A. The men who built the road.

Q. Are you speaking of the railroad company?

A. I am speaking of the men. The stockholders who built the road were entitled to it.

Q. Whom did you get the stock from?

A. By order, I think, of the executive committee—Mr. Douglas and those parties. We required that they should put up stock in

addition—full-paid stock. They had not stock enough, but some county gave them stock.

Q. You got the stock under the contract you have here?

A. I presume so.

Q. You got it from the railroad company, unless the contracts you had been making were frauds and humbugs on the face of them?

A. We didn't mean them for frauds.

583 Q. You didn't intend them to be frauds?

A. No, sir.

Q. If the contract under which you did the last part called for the railroad company to turn over so much stock, you got it from the railroad company?

A. The stock they were giving us, not for this road, but for building the forty miles, some of the counties gave it up.

Q. You got it from the railroad under and by virtue of the contract?

A. We were to have the stock.

Q. You got it under and by virtue of the contract?

A. I suppose so. I suppose it was collateral, of course, under some contract.

Q. It was not a bonus to you?

A. It was given, I suppose, for collateral. They said it was good stock, paid up, every dollar of it. They built forty miles and some county had stock and would give it to them provided the road was built so and so.

Q. That was the county of Ralls?

A. I don't know.

Q. You got some stock given up by some county?

584 A. That is what they said, that the county didn't think the stock was worth anything, and said if you do so and so you can have the stock.

Counsel for the trustee objects to any testimony as to any stock.

Q. You got all the stock by virtue of the contract?

Counsel for the trustee objects to the question. Objection overruled; plaintiff excepts.

A. I must have got it by virtue of the contract, or else a verbal bargain otherwise.

Q. Did you have a verbal bargain?

A. I don't know that I had. Sometimes we do things that way. I wanted something to give additional security and they handed it over.

Q. You do not know of any other contract besides this one that you had with the company—the one in writing with the company?

A. I do not just recollect at present; there might be.

Q. You have got that stock?

A. I presume it is somewheres around.

585 Q. The first contract you had with the company, the contract made in 1881, gave you a representation in the board of directors?

A. Not that I know of.

Q. Did it not authorize you to designate so many men as members of the board of directors?

A. I could not recollect if it did; we never had one there. It might be that in the contract we would have a right to have so many members if we exercised it, but we never did exercise it.

Q. You were satisfied with the board as it was?

A. I suppose so.

Q. Did you designate De Witt C. Blair as one of the directors?

A. No, sir; I never knew he was a director.

Q. Whom did you designate?

A. I do not know anything about it.

Q. Whom did you designate?

A. I do not know, for my part.

Q. You do not remember designating any one?

A. I do not remember.

Q. How long before you started the suit to foreclose the mortgage and have a receiver appointed did you see Mr. Walker?

586 A. I saw him a short time when I came out here and he wanted to abandon the road.

Q. Did you see him in New York?

A. Yes, sir; I think I must have seen him a few times, but he never told me about the difficulty.

Q. Didn't you see him in New York just before you came here and applied for a receiver?

A. Yes. I won't say whether it was in New York. It was a short time—probably it was in New York—that he came and told me I had better apply for a receiver.

Q. You say he told you at that time that he wanted you to apply for a receiver?

A. Yes, sir.

Q. That is your testimony under oath?

A. Yes, sir; he said he wanted to give up the road.

Q. He told you that?

A. Yes, sir.

Q. I will ask you whether you did not tell him that you proposed having a receiver appointed, and whether he didn't ask you to have him appointed receiver.

A. He did.

Q. You told him that you were going to apply for a receiver?

587 A. No; I don't know that I told him so. He said, "I am willing to be receiver and do the best I can for the road for you."

Q. Didn't he tell you that after you told him that you were going to come out here and apply for a receiver?

A. I didn't tell him that.

Q. You are positive of that?

A. Yes, sir.

Q. Did not Mr. Walker tell you in this place, when you were last out here, in 1883, a few months before you applied for a receiver, that he proposed—as he had some business he must attend to in California, that he would be gone there a short time, and then come

back and go on with the work of the company, or words to that effect?

Counsel for the trustee objects to this examination unless counsel for Mr. Fogg agree to put Mr. Walker on the stand. Objection overruled; trustee excepts.

A. No, sir.

Q. Did he not tell you the same thing in the city of New York, just a short time before you came out here and made ap-

588 plication for a receiver?

A. Tell me about going to California?

Q. That he had business there that he had been trying to attend to and was going there and would come right back.

A. I heard he had been in California. I inquired of him because it was said he was interested in a road in California, and that there were a number of respectable gentlemen connected with him, and they came out and denied it, that they were directors in the road, and never heard about it. I inquired of him if such was the fact.

Q. Did he not tell you that he was going there for a short time?

A. I don't know that he told me that he was going to California. When I saw him was in July, when I made the settlement.

Q. I am not asking you about that; I ask you when you saw him in December, 1883, or January, 1884, just before you filed the bill for the receivership in the case, if he did not tell you that he was going to California for a short time and would be back

589 in a short time?

Counsel for the trustee objects to this as immaterial and irrelevant. Objection overruled; trustee excepts.

A. He said, "I am going to give up the road and you had better apply for a receiver. I am willing to be receiver and do the best I can for you about it. I see that I cannot do anything."

Q. Did he not beg you not to have a receiver appointed?

A. No, sir; he wanted it himself.

Q. Did he not tell you that the directory was made up of competent men and they would pull through?

A. If he did tell me so he would tell me a lie which I knew to be so.

Q. Didn't he tell you so?

A. No; he would not tell me so when Meeker had bursted and the men had transferred their property.

Q. Who had?

A. P. D. Warren (?), his brother-in-law, did.

Q. Who had transferred property—the railroad company's property?

A. Some of the gentlemen that were well off.

590 Q. I am asking you about the railroad company?

A. I didn't know about them.

Q. That is what I am asking you about.

A. I understood you the other way.

Q. Do you say that at that interview in New York Mr. Walker did not tell you that he and his associates were competent to run and manage the road, and that he was only going to California for a short time?

A. Not a word; not a word that he was competent to manage the road, and this, that, and the other; not a single word.

Q. Did he not tell you that he would only be gone a little time in California, and as soon as his business was done he would come right back, and he wanted to meet you out here?

A. I do not recollect about that.

Q. Did he not tell you that?

A. I do not know. He was desirous of being the trustee.

Q. The trustee?

A. The receiver. He was desirous of being receiver if I would take him. I said that could not be done; that he had been
591 a director and president of the road, and it had burst up, and no one would have confidence in it.

Q. How much experience have you had in building railroads?

A. Well, I have had a good deal of experience. I have found the money to build fifteen hundred miles of railroad, of my own money, and I have kept all I had in them. I had to take roads to pay me.

Q. Who furnished the rolling stock for the railroad?

A. We sold it. After the road was through we bought the rolling stock.

Q. You leased it to the railroad?

A. Yes, sir.

Q. At that time didn't you own a controlling interest in the stock in the road?

A. I did not consider that we did?

Q. How much did you hold?

A. I do not know what Mr. Taylor and I held.

Q. Didn't you have 4,500 shares apiece?

A. We had it all on forty miles.

Q. Did you not insist with the directory of the railroad, with Mr. Walker and Judge Dimmitt and other gentlemen, that to
592 avoid the necessity of a receivership and foreclosure of the mortgage that you wanted enough stock to control it, so that if you wanted to take possession you could do it without a foreclosure?

Counsel for the trustee objects to the question. Objection overruled; trustee excepts.

A. That was a good many years ago when the first forty miles was built. We required then every kind of security possible as collateral security for our debts. We only had a portion of the bonds. They had a lot of bonds out, and we required they should put up.

Q. You did not get any stock under the first mortgage?

A. That first mortgage—that was the very stock we got.

Q. You did not get any stock under that?

A. That was the stock we were to have.

Q. You got stock under the contract you made in 1881?

A. That was the stock that they already had.
Q. Have you got any more stocks than that?
A. No, sir.
Q. You got it under that contract?
593 A. I got it under the contract.
Q. Did you not represent to this directory, Mr. Walker, Judge Dimmitt, Mr. Wisner, and the rest of the men who were managing the St. Louis, Hannibal & Keokuk Railroad Company, that to avoid the necessity of instituting proceedings to foreclose the road and have a receiver that you wanted to control the stock in the road?
A. I never heard about a receiver. We required them to give all the collateral possible.
Q. Did you not do that when they came to New York to get you to advance the money that you advanced under the contract of 1881?
A. I suppose they gave it to us as collateral security.
Q. And it was done for the purpose of enabling you to control the road?
A. No, sir; it was done for no such purpose. The gentlemen whom you name here I never saw or heard tell of before.
Q. He was in the directory?
A. I don't know about that.
Q. Did you not make that arrangement and make that
594 representation to Mr. Walker and other representatives of the directory who were in New York making the arrangement with you?
A. My recollection at present is the papers will tell. When they came and wanted equipments to build another forty miles we said, "What collaterals can you give, for the railroad is worth nothing?" and they said, "We have $400,000 of stock that we have got, that we have earned, on the other forty miles. We have not built the road here and are not entitled to stock. We have not got stock to make that out, but have got some from counties; that the counties were to have stock for bonds, and we would get that and give it as collateral security," and that would be so much, and then we should have the bonds as they built twenty miles of road.
Q. As collateral also?
A. Yes, sir.
Q. When did those bonds become yours absolutely?
595 A. It might have been in July, 1882 or 1883. We then settled with them and found the bonds. When we came to settle they had been so long building the road that the bonds at par would not pay the money we had advanced.
Q. Whom did you have the settlement with?
A. Mr. Walker.
Q. Where?
A. I forget where it was; I guess it was at Hannibal.
Q. When?
A. At that time.
Q. What time?

A. That time.
Q. When?
A. The summer of 1882. It might have been in 1882. I could look at some papers and tell. I suppose it was 1882.
Q. Is it not a fact that you have never closed out on the note on which you hold the bonds and stock?

Counsel for the trustee objects to the question as immaterial and irrelevant. Objection overruled; trustee excepts.

A. For these forty miles that we got bonds we never had any note. It was a cash matter, and when we got through he had not bonds enough to pay me.
Q. How did you get the other bonds to make up the difference?
596 A. We have no bonds to make up the difference. You must recollect forty miles of road at $200.00 is $800,000.
Q. That is not what I am talking about. I am talking about the $12,000.
A. That is what I am talking about.
Q. You are certainly not if you are figuring $800,000.
A. At $12,000 it is $480,000. He had sold a part of the bonds to other people, so we only got $440,000 of bonds; I guess $440,000. I forget the amount, at any rate.
Q. You got the stock at the same time?
A. No; we had that before that—away off before that. This was on the last settlement we had.
Q. You got stock under that contract?
A. Yes, sir; we hold the stock as collateral.
Q. How do you hold it as collateral?
A. It was put in our hands, you see, and we got $440,000 of stock, and I think the settlement, the clean cash settlement, was $556,000. What have we got? $440,000 of stock and $450,000 of bonds, and we have got nothing to pay us.
Q. The stock.
597 A. The stock is not worth transferring.
Q. How did you get it?
A. It was left as collateral.
Q. Collateral to what?
A. Collateral in addition.
Q. In addition to what?
A. I suppose for building the road.
Q. Didn't you say you got the stock under the contract?
A. I suppose the contract or verbally.
Q. You got it under the contract?
A. Probably I did.
Q. There is no collateral about the contract, is there?
A. The whole meaning about it is that you build the road and everything goes to you.
Q. There is nothing said about it in the contract?
A. Probably there never was. They would not put it in. He said they had the bonds already sold.

Q. You say the first you knew of Mr. Fogg having any claim was after you brought the foreclosure suit?

A. I heard just before—when Mr. Walker had given up everything—about the debt, when he came to tell me about the receiver, just about the foreclosure suit. I said, "I want to know
598 about the debts. You told me you did not owe anything."

Q. You heard about it before you brought suit?

A. Just before. I wanted to know what debts he owed, and he said he owed the men $12,000 or $14,000; that is all the road owes. I said, "What other claims—any claims against you as contractor?" "No; there is a man who got up a pretended claim against us, but that is against us and not against the road."

Q. When did you employ Mr. Larned and Mr. Case to bring the suit?

A. Just a few days before it was brought.

Redirect examination by Mr. CASE:

Q. As a matter of fact, I am not going to ask you about any mortgage except the last mortgage. I do not care about the other ones, and the last bonds. You hold the bonds you have introduced in evidence. As a matter of fact, what security did you look at that was given by the company besides the bonds? Was it anything besides the mortgage that you looked at?

A. No, sir; nothing in the world.

599 Mr. Reynolds objects to the question and answer as irrelevant.

Q. That is all that you relied on as security?

A. Yes, sir.

Same objection.

Q. The mortgage that is now being foreclosed?

A. Yes, sir.

Q. Did you have counsel to examine that mortgage—the one that is being foreclosed—and pass on its validity?

Mr. Reynolds objects to the question as irrelevant and immaterial. Objection overruled. Plaintiff Fogg excepts.

A. They brought the mortgage down to New York, and it was pronounced by counsel in New York as being all right.

Q. And it is on the faith of that opinion of counsel that you took the last bonds?

Same objection and ruling. Plaintiff Fogg excepts.

A. Yes, sir.

At this point the further hearing of the case was adjourned until 2 p. m., September 15th, 1885.

In pursuance of adjournment, all parties being present, by
600 counsel, the hearing was resumed this 15th day of September, 1885, at the office of the master, at 2 o'clock p. m., the time designated.

Complainant's Evidence in Rebuttal.

The complainant offered in evidence certified copy of the mortgage made by the St. Louis, Hannibal & Keokuk Railroad Company, of date October 1st, 1872, to Clarence G. Mitchell, of the city of New York, and De Witt C. Blair, Belvidere, in the State of New Jersey, to secure a certain bonded indebtedness therein named, marked Plaintiff's Exhibit 1.

Mortgage of St. L., H. & K. R. R. Co., Dated Oct. 1, 1872, *to Clarence G. Mitchell & De Witt C. Blair.*

This indenture, made the first day of October, A. D. eighteen hundred and seventy-two, between the St. Louis, Hannibal and Keokuk Railroad Company, a corporation duly organized under the laws of the State of Missouri, of the first part, and Clarence G. Mitchell, of the city of New York, and De Witt C. Blair, Belvidere, in the State of New Jersey, of the second part.

Whereas the said St. Louis, Hannibal and Keokuk Railroad Company is a corporation duly organized under the laws of the State of Missouri, with power to locate, construct, and operate a rail-
601 road extending from the city of St. Louis, in said State of Missouri, to some point on the north line of said State, and also from some point near Troy, in the county of Lincoln, to the coal-fields in said county; and whereas the said St. Louis, Hannibal & Keokuk Railroad Company is desirous of borrowing money to aid it in completing the construction and equipping of its road, and for said purpose has made and has resolved to issue bonds, in the sum of one thousand dollars each, amounting to the aggregate principal sum of four millions two hundred thousand dollars, and numbered from one to four thousand two hundred, both inclusive, which said bonds are in the words and figures following, subject only to necessary variations as to the distinguishing numbers:

$1,000. No. —.

UNITED STATES OF AMERICA, *State of Missouri.*

St. Louis, Hannibal and Keokuk Railroad Company first-mortgage bond. Interest at eight per cent., payable semi-annually.

Know all men by these presents that the St. Louis, Hannibal and Keokuk Railroad Company hereby acknowledges itself to owe and promise- to pay to D. C. Blair, of Belvidere, New Jersey, and
602 Clarence G. Mitchell, of the city of New York, or bearer, the sum of one thousand dollars in lawful money of the United States, at the agency of said railroad company, in the city of New York, on the first day of October, one thousand nine hundred and two, with interest on the said principal from the first day of October, one thousand eight hundred and seventy-two, at the rate of

eight per centum per annum, at such agency in the city of New York, on the first days of April and October in each year, until the said principal shall be fully paid, on the presentation of the annexed coupons as they respectively become due.

This bond is one of four thousand two hundred, numbered from one to four thousand two hundred, inclusively, and each for one thousand dollars, amounting in the aggregate to four millions two hundred thousand dollars, and all of even date herewith, secured by a mortgage deed of trust, duly executed and delivered to the said D. C. Blair and Clarence G. Mitchell, bearing the same date as this bond, and conveying to the said trustees all the railroad of this company
603 in the State of Missouri, situated and located between the city of St. Louis, in said State of Missouri, and the city of Keokuk, in the State of Iowa, including the coal and glass-sand branches, in Lincoln county, Missouri, together with the right of way, depots, shops, rolling stock, and all the other property, rights, and franchises described in the said mortgage or deed of trust. It is hereby expressly agreed by said railroad company with each and every holder of this bond that in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, or in case of the non-payment of any instalment required to be paid into the sinking fund provided for by the said deed of trust, if such default shall continue for six months after such installment shall have become payable, then and in either case the principal of the bond shall become due in the manner provided in the deed of trust, and the said company hereby expressly waives the benefit of every extension, stay, or appraisement law which has been or may
604 hereafter be enacted. This bond shall pass by delivery or by transfer on the books of the company in the city of New York, after a registration of ownership certified hereon by the transfer agent. No transfer except upon the books of the company shall be valid unless the last transfer be to bearer, which shall bestow transferability by delivery, and it shall continue subject to successive registrations and transfers to bearer as aforesaid at the option of the holder. This bond shall not be obligatory unless the certificate endorsed hereon is signed by the trustees.

In witness whereof the said party of the first part has caused its corporate seal to be hereto affixed and these presents to be signed by its president and treasurer and countersigned by its secretary on the first day of October, A. D. 1872.

Trustee's Certificate.

The undersigned trustees do hereby certify that this is one of a series of four thousand two hundred bonds referred to in the within-mentioned deed of trust; to each of which bonds there are
605 attached sixty interest coupons, numbered respectively from one to sixty, inclusive, in the following form:

$40. No. —

St. Louis, Hannibal and Keokuk Railroad Company will pay the bearer forty dollars, at its agency in the city of New York, on the first day of April, 1873. Interest on bond No. —.

Now, therefore, this indenture witnesseth: That the said party of the first part, for and in consideration of the premises and of the sum of one dollar to it duly paid by the parties hereto of the second part, and in order to secure the payment of the principal and interest of the said bonds according to the tenor thereof, hath granted, bargained, sold, assigned, transferred, and conveyed, and by these presents doth grant, bargain, sell, assign, transfer, and convey, unto the said parties of the second part, their lawful successor or successors in the trust hereby created, the survivor of them, and assigns, all and singular all trusts, lots, and pieces of land whatsoever purchased, acquired, or belonging to the said party of the first
606 part, or which may or shall hereafter be acquired or purchased or belonging to it, in the State of Missouri, and all and singular the railroad of the said party of the first part, now built or constructed or hereafter to be built and constructed, together with the right of way, grading, embankments, excavations, sidings, culverts, superstructure, iron track or tracks, fences, and appurtenances whatsoever thereof, and all materials for the construction thereof now made, done, or acquired, or which may at any time be made, done, or acquired by the said party of the first part, and all and singular the buildings, shops, engine-houses, depots, turn outs, improvements, and construction of every nature and description now belonging to or hereafter to belong to the said party of the first part; also all and singular the equipments of furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every nature and description now belonging or hereafter to belong to the said party of the first part, together with all and singular its rights, powers,
607 franchises, emoluments, income, and property, real, personal, and mixed, whatsoever, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, in law or in equity, of the said party of the first part, now acquired or hereafter to be acquired, in and to the same and each and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above mentioned or described premises, rights, franchises, railroad, and property, real, personal, or mixed, unto the said parties of the second part and the survivor of them, their successor or successors and assigns, in trust for the uses, intents, and purposes, hereinafter expressed and declared of and concerning the same—that is to say:

Article first. No one of the said bonds shall be deemed issued or be valid or secured by this mortgage until there shall have been endorsed upon it a certificate, duly signed by the parties of the second part or their successor or successors in the trust, as follows:

608 *Trustee's Certificate.*

The undersigned certify that the within bond is one of four thousand two hundred bonds, of like tenor and amount, issued in pursuance of the mortgage from the St. Louis, Hannibal and Keokuk Railroad Company, mentioned in said bonds, which is duly recorded in the counties of St. Louis, St. Charles, Lincoln, Pike, Ralls, Marion, Lewis, and Clarke, in the State of Missouri.

Article second. For the purpose of providing a sinking fund for the redemption of said bonds, it is further understood and agreed between the parties hereto as follows: The parties of the first part shall pay to the parties of the second part, their successor or successors in the trust, in the year eighteen hundred and eighty and each year thereafter, in semi-annual payments, on the first days of January and July in each year, a sum equal to one per cent. of the aggregate principal of all of said bonds which shall have been delivered to the said party of the first part, sold or issued, which sums when received shall be invested by the said parties of the second part, their successor or successors, in
609 the purchase of bonds secured by this mortgage or deed of trust, at the lowest price the same can be obtained, provided they can be so purchased at not more than five per centum above their par value; and when any such bonds are so purchased they shall at once be registered in the names of the said parties of the second part, trustees for the said sinking fund, after which said bonds shall not be transferable or capable of being again made payable to bearer; and if the said bonds cannot be purchased for five per centum above their par value thereof, as aforesaid, or a less price, the said parties of the second part and their successor *and* successors in the trust shall invest the sums so received by them for the sinking fund in the bonds of the Federal Government of the United States or of the State of New York, and all interest received on securities held for the sinking fund shall be invested in the same manner as the principal sums aforesaid.

Article third. The party of the first part doth hereby fur-
610 ther covenant and agree to and with the parties of the second part and their successor or successors in this trust, that the party of the first part shall at all times hereafter keep, at its office in the city of New York and in such other places as it may hereafter appoint, a book or books, which shall be respectively designated as "the register of bonds issued under the first mortgage," and that any holder of any of the bonds issued under the provisions of this indenture may there register his or her bonds upon presenting the same, and that when a bond is so registered in the name of any person such person shall be deemed and regarded as the owner of such bond, and that all payments of either principal or interest thereon shall thereafter be made to him or his order only, and that such payments to him or to his order shall be valid payments of such principal or interest and a discharge to the party of the first part to

the extent of the sum so paid; and also that such registry be changed upon presentation of the bond with the written order
611 of the person in whose name it is registered, properly authenticated to the name of such persons, and he shall thereafter be deemed and regarded as the owner of the bond and its interest coupons under the same circumstances and conditions and with the same rights as the prior owners, including the right to change the registration in manner aforesaid, and so, from time to time, as the owner for the time being may desire; and that the registered holdeer may also have the right to register the bond as payable to bearer, in which case the bond and interest coupons shall be payable to the holder presenting the same; and any holder of a bond so registered as payable to bearer may again cause it to be registered in his name with the same effect as the first registration, and successive registrations may in the same manner be made from time to time as may be desired; and also that the holder of any of said bonds may, at his option, surrender the coupons attached thereto to be can-
612 celled, in which case interest thereon will thereafter be paid to him or his order only.

Article fourth. It is further mutually agreed by and between the parties hereto that the bonds to be issued under this first mortgage shall not exceed twenty thousand dollars for every mile of track actually completed.

Article fifth. The said party of the first part hereby further agrees that it will pay or cause to be paid the bonds herein mentioned and the interest thereon according to the terms thereof, and all taxes, levies, and assessments imposed and assessed or which hereafter may be imposed or assessed upon the premises, franchises, and property hereby conveyed or intended so to be, and also the United States Government tax upon the interest payable on said bonds and each of them and represented by the coupons annexed to said bonds, and will at its own cost and expense do or cause to be done all things necessary to preserve and keep valid and intact the lien or incumbrances hereby created.

Article sixth. In case default shall be made in the pay-
613 ment of any interest upon any of said bonds when the same shall become due and payable, or in the payment of any sum or sums of money hereinbefore provided to be made for the creation of said sinking fund, and such default shall continue for six months after the same has been demanded, the whole principal sum mentioned in each and all of said bonds then outstanding shall, at the option of a majority of the holders in interest of said bonds, forthwith become due and payable; and in such case it shall be lawful for the said parties of the second part, their successor or successors, to enter upon all and singular the railroad property and premises hereby conveyed or intended to be conveyed, and to have, hold, use, and operate the same until the same shall have been sold or otherwise disposed of in pursuance of the power hereinafter mentioned or by virtue of the decree of some court of competent jurisdiction, and until such time and from time to time make all needful repairs and

replacements and such useful alterations, additions, and im-
614 provements to said railroad as may be necessary for the proper working of the same; and to receive the tolls, freight, income, rents, and profits thereof, and, after deducting the expenses of operating and managing the said railroad and other property, and of the said repairs, replacements, additions, and improvements, as well as just compensation for their own services and for the services of such managers, servants, agents, attorney, and counsel as may by them have been employed, to apply the moneys accruing as aforesaid to the payment of the said bonds *pro rata* and without discrimination or preference, and thereafter to pay over any surplus to the said party of the first part, its successors or assigns, or as any court of competent jurisdiction shall order, and to restore the said railroad and other property to the said party of the first part: Provided, nevertheless, That if the said parties of the second part, their successor or successors in this trust, shall think it expedient, after such entry as aforesaid, it shall be lawful for them to demise or let the said railroad and premises to any per-
615 son or persons, corporation or corporations, willing to work and operate the same for such term or period, at such rent or proportion of receipts and profits, and generally upon such terms and conditions as the said parties of the second part shall think fit, and the revenue or income to arise from such demise shall be applied in the same manner as the net income or revenue to arise in the event of said railroad being worked and operated by the said trustee or trustees is applicable under the provision immediately hereinafter contained.

Article seventh. In case default shall be so made and continued as aforesaid the parties of the second part, their successor or successors in this trust, may also and, upon the written request of the holder or holders of at least one hundred of said bonds, shall foreclose this mortgage by legal proceedings or sell or cause to be sold the said railroad, franchises, and property, real or personal, hereby conveyed or intended so to be, and all benefit and equity of redemption of the party of the first part in and to the same and
616 every part thereof, with the benefit of the franchises aforesaid, which said last-mentioned sale shall be at public auction, at the city of New York, in the State of New York, or at the city of St. Louis, in the State of Missouri, on previous notice of the time and place of such sale by advertisement, published not less than three times a week for ten weeks, in at least two newspapers of general circulation published in each of the cities of New York, St. Louis, and Chicago, and in such other places as may be required by law, and in such case said parties of the second part, their successor or successors in this trust, shall make and deliver to the purchasers of the said premises good and sufficient deeds of conveyance for the same in fee simple, and said sale and conveyance shall be a perpetual bar, both in law and equity, against the party of the first part, its successors and assigns, and all other persons claiming by, through, or under them, of all right, title, and interest or claim in or to said rail-

road, premises, and property and every part and parcel thereof;
617 and in case of such sale the parties of the second part, their successor or successors, may bid for and purchase said property, real and personal, or any part thereof, in behalf of the holders of said bonds. In case of such sale the said parties of the second part shall deduct from the proceeds of such sale their just allowances for the expenses thereof, including attorneys' and counsel fees, and all expenses which may have been incurred in operating, managing, or maintaining the said railroad, or in managing the business thereof, as well as just compensation for their own services, and thereafter shall apply so much of the said proceeds as may be necessary to the payment of the principal and interest of the said bonds then remaining unpaid *pro rata*, without discrimination or preference, and any surplus remaining after such payment shall be paid over to said party of the first part or as any court of competent jurisdiction shall order; and it is hereby declared that the receipt or receipts of the parties of the second part, their successor or suc-
618 cessors, shall be a sufficient discharge to the purchaser or purchasers of the premises hereby mortgaged or any part thereof, and so sold as aforesaid, for his or their purchase-money, and that such purchaser or purchasers having such receipts shall not, after the payment thereof, be bound to see to the application of said moneys or be in any manner answerable for the loss or misapplication thereof.

Article eight. The said parties of the second part and their successors in this trust may employ, at the expense of the said party of the first part, such attorneys, counsel, or other agents as may be necessary in the execution of the trusts hereby created, and shall be entitled to just compensation for all necessary services rendered in the execution of this trust, and to be reimbursed for all necessary expenses in and about the same; and it is further mutually agreed that the said parties of the second part and their successor or successors in this trust shall not at any time be responsible for the default or misconduct of any attorney, counsel, or agent em-
619 ployed by them, and shall be bound to the exercise of ordinary diligence only.

Article ninth. And it is further mutually agreed that in case of the resignation, removal, insolvency, incapacity, or inability for any other reason of the said parties of the second part or either of them to act in the executive of the trust hereby created, then the holder of a majority in interest of said bonds may select and designate in writing one or more persons or corporations competent to act in the place of said parties of the second part or either of them to execute said trust, and until the bondholders make such selection the president of the party of the first part, with the consent in writing of the owners and holders of said bonds to the amount of two hundred thousand dollars, may select and appoint one or more persons or a corporation competent to act to fill the vacancy, and the person, persons, or corporation so selected shall have and possess and be vested with the same rights and powers as trustee or trustees as he,

they, or it would have had and possessed or been vested
620 with had he, they, or it been originally made a party or parties to this indenture; and the said party of the first part hereby covenants to make, execute, and deliver all such other and further instruments, deeds, or indentures as may be necessary to enable the person or persons or corporations so appointed to execute the trust hereby created, and successors of any such new trustee or trustees may be appointed in like manner as often as a vacancy in said trust shall occur.

Article tenth. The party of the first part shall from time to time and at all times hereafter and as often as thereunto requested by the parties of the second part, their successor or successors, execute, acknowledge, and deliver all such further deeds, conveyances, and assurances in law for the better assuring unto the parties of the second part, their successor or successors in the trust hereby created, upon the trusts herein expressed, the land, railroads, equipments, and appurtenances hereinbefore conveyed or intended so to be and
621 all other property or things whatsoever which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises now held or hereafter acquired, including the franchise to be a corporation, as by the parties of the second part, their successor or successors, or by their counsel learned in the law shall be reasonably advised.

Article eleventh. And it is further agreed that the stamps required by the United States revenue laws, instead of being placed on this mortgage, shall be placed on the bonds secured hereby as the same shall be issued: Provided always, and this grant and conveyance is made upon the express condition, that until some default shall be made in the performance or observance of the conditions, obligations, or requirements herein contained the said party of the first part shall be permitted to possess, manage, operate, and enjoy the said railroad, with the equipments and appurtenances and all other the lands and premises, property, and franchises hereinbefore described, and that upon the payment in full of said bonds
622 and the interest due thereon, then the estate, title, and interest hereby granted shall cease, determine, and be void, and the said parties of the second part, their successor or successors in this trust, shall convey, assign, transfer, and deliver over to said party of the first part and its successors the said railroad and equipments and appurtenances, and all moneys, notes, bills, bonds, mortgages, choses in action, and property, real, personal, or mixed, and things of value remaining in their possession, and shall duly execute and deliver to the said party of the first part a proper release or satisfaction of this mortgage.

In witness whereof the said party of the first part has caused its corporate seal to be hereto affixed and these presents to be attested by the signatures of its president, treasurer, and secretary, and the parties of the second part have hereto subscribed their names to

testify their acceptance of said trust on the day and year first above written.

ST. LOUIS, HANNIBAL & KEOKUK
R. R. CO.,
[SEAL.] By GEORGE GREEN, *President.*
623 S. P. WISNER, *Treasurer.*
WM. BUCHANAN, *Secretary.*
D. C. BLAIR,
C. G. MITCHELL, *Trustees.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Charles Nettleton, a commissioner for Missouri in New York, do hereby certify that on this tenth day of October, A. D. 1872, personally came before me De Witt C. Blair and Clarence G. Mitchell, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as parties thereto, who acknowledged the same to be their act and deed for the purpose therein mentioned as trustees therein described.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal this 10th day of October, A. D. 1872.

CHARLES NETTLETON,
Commissioner for Missouri in New York,
117 *Broadway, N. Y. City.*

STATE OF IOWA, }
Linn County, } *ss:*

Be it remembered that on this thirtieth day of September, A. D. eighteen hundred and seventy-two, before me, the subscriber, a notary public for the county of Linn & State of Iowa aforesaid, personally appeared George Greene, Samuel P. Wisner, who are personally known to me to be the identical persons whose
624 names are affixed to the foregoing indenture as respectively president and treasurer thereof, and acknowledged the said indenture to be the voluntary act and deed of said "The St. Louis, Hannibal and Keokuk Railroad Company," and, each being by me duly sworn or affirmed, deposes and says, each for himself, that he, George Greene, is president of and that he, Samuel P. Wisner, is treasurer of said railroad company, and that they signed the foregoing instrument as such president & treasurer and caused the corporate seal of said company to be affixed thereto, all as the act and deed of said company, by order and authority of said company, for the uses and purposes therein mentioned.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed my official seal on the day and year above written.

A. V. EASTMAN,
Notary Public.

STATE OF MISSOURI, } ss:
County of Marion, }

Be it remembered that on this sixteenth day of October, A. D. eighteen hundred and seventy-two, before me, the subscriber, a notary public for the county of Marion and State of Missouri
625 aforesaid, personally appeared William Buchanan, who is personally known to me to be the identical person whose name is affixed to the foregoing indenture as secretary thereof, and acknowledged the said indenture to be the voluntary act and deed of said "The St. Louis, Hannibal and Keokuk Railroad Company," and, being by me duly sworn or affirmed, deposes and says that he, William Buchanan, is secretary of said railroad company, and that he signed the foregoing instrument as such secretary and caused the corporate seal of said company to be affixed thereto, all as the act and deed of said company, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my seal notarial, at my office, in Hannibal, in said county of Marion, the day and year aforesaid.

LLEWELLYN W. ROSWELL,
Notary Public, Marion County, Missouri.

STATE OF MISSOURI, } ss:
County of Marion, }

IN THE RECORDER'S OFFICE.

I, Homer H. Winchell, clerk of the circuit court and *ex officio* recorder within and for the county of Marion, do certify that
626 the instrument of writing hereto attached, with the certificate thereon, was filed for record in said office on the 16th day of October, 11.15 o'clock a. m., 1872, and that the same is duly recorded in said office in Book Y No. 2 for Recording Deeds, &c., at page 327, &c.

In witness whereof I have hereto set my hand and affixed
[SEAL.] the seal of said court. Done at office, at Palmyra, this the 16th day of October, 1872.

HOMER H. WINCHELL, *Recorder.*

STATE OF MISSOURI, } ss:
County of Lewis, }

IN THE RECORDER'S OFFICE.

I, Thomas B. Jeffries, clerk of the circuit court and *ex officio* recorder within and for the county aforesaid, do certify that the instrument of writing hereto attached, with the certificates thereon, was filed for record in said office on the 19th day of October, A. D. 1872, and that the same is duly recorded in said office, in vol. Twelve for Recording Conveyances, at pages 564 to 574, inclusive.

In witness — I have hereunto set my hand and affixed
[SEAL.] the seal of said court, at my office, in Monticello, this 19th day of October, A. D. 1872.

THOS. B. JEFFRIES, *Recorder.*

STATE OF MISSOURI, } ss:
County of Clarke, }

IN THE RECORDER'S OFFICE.

627 I, W. A. Spruance, recorder of deeds in and for said county of Clarke, do certify that the instrument of writing hereto attached, with the certificates thereon, was filed for record in my said office on the 21st day of October, A. D. 1872, at 8.15 o'clock a. m., and that the same is duly recorded in said office in Mortgage Book E, at pages 20 to 29, inclusive.

In witness — I have hereunto set my hand and affixed [SEAL.] the seal of said office, at my office, in Kahoka, this 21st day of October, A. D. 1872.

W. A. SPRUANCE, *Recorder.*

Filed and recorded October 25th, 11.25 a. m., 1872.

W. C. KENNETT, *Recorder.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, the undersigned, recorder of deeds, certify the foregoing to be a true copy of an instrument in writing executed by the St. Louis, Hannibal and Keokuk Railroad Company to the St. Louis, Hannibal and Keokuk Railroad Company's bondholders' trustees, together with the certificates of acknowledgement, &c., and date of filing and recording thereof, as fully as the same remains of record in my office in Book 454, at page 551.

Witness my hand and official seal this 8th day of September, 1885.

[SEAL.] THOS. F. FARRELLY, *Recorder.*

628 Objected to by defendant on the ground that the same was immaterial, irrelevant, and incompetent. Objection overruled and exhibit filed with the master.

Ralls County Bond Offered in Evidence.

The complainant next offered in evidence bond No. 15, issued by the county of Ralls, State of Missouri, to the St. Louis & Keokuk Railroad Company dated February 1st, 1870, being for the sum of five hundred dollars, *dated* with interest at ten per cent. until paid.

Objected to by defendant as immaterial, irrelevant, and incompetent. Objection overruled.

Lincoln County Bond Offered in Evidence.

The complainant next offered in evidence a bond, No. 66, issued by the county of Lincoln, State of Missouri, to the St. Louis and Keokuk Railroad Company, dated June 21, 1870, being for the sum of five hundred dollars, with interest at 10 per cent. per annum until paid.

Objected to by defendant as immaterial, irrelevant, and incompetent. Objection overruled.

Josiah Fogg's Testimony in Rebuttal.

Mr. JOSIAH FOGG was then recalled by plaintiff:

Q. Mr. Fogg, what do you know about the bond, No. 15, of Ralls county here shown you?

629 Question objected to for same reason. Objection overruled.

A. I know that this bond was issued; was one of the series all of like character and amount, only differing in numbers, and that the same was paid over to me as president of the St. Louis & Keokuk Railroad Company in June or July, 1870.

Same objection and ruling.

Q. Mr. Fogg, what do you know about this bond, No. 66, of Lincoln county?

A. I know that it was one of a series all of like character and amount, only differing in numbers, turned over to the St. Louis and Keokuk Railroad Company as the work on the road progressed. I saw the bond signed by the officers of the county.

Q. Mr. Fogg, do you know and can you tell what was the value of the eighteen miles of St. Louis and Keokuk railroad commencing at the fair grounds near Hannibal and extending across Ralls county to Frankfort, in Pike county, on March 4th, 1873?

A. I do; it was well worth $12,000 a mile, making a total of $216,000 for the eighteen miles.

Signature waived.

630–631 I certify the foregoing to be a full, true, and complete transcript of the testimony of De Witt C. Blair, John I. Blair, and Josiah Fogg; that the same was taken down in short-hand in my presence and transcribed under my supervision; that no objection was made to the manner of taking the same by counsel for either sides, and that the signatures of the witnesses were waived.

B. GRATZ BROWN,
Special Master.

Sep. 15, 1885.

The foregoing is all the evidence in the case.

633 Be it remembered that on the 3d day of May, 1883, there was filed in the office of the clerk of the United States circuit court for the eastern district of Missouri a certain bill of complaint, which is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

Bill of Complaint.

In the Circuit Court of the United States in and for the Eastern District of Missouri, in the Eighth Judicial Circuit.

To the honorable the judges of the circuit court of the United States for the eastern district of Missouri:

Josiah Fogg, of Ouray, in the State of Colorado, and a citizen of the State of Colorado, brings this his bill against the St. Louis, Hannibal and Keokuk Railroad Company, a railroad corporation incorporated and organized under and by virtue of the general public statutes of the State of Missouri and a citizen of said State of Missouri, and having its principal offices and chief places of business in this circuit and district; and against the St. Louis and Keokuk Railroad Company, also a railroad corporation created, organized, and incorporated under and by virtue of an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the St. Louis and Keokuk Railroad Company," approved February 16th, 1857, and a citizen of said State of Missouri, having its chief office and
634 principal place of business in this circuit and district.

And thereupon your orator complains and says that on or about the 3d day of October, in the year 1882, he duly recovered a judgment in this court in his favor in a certain action then pending in said court, wherein your orator, Josiah Fogg, was the plaintiff and the said St. Louis and Keokuk Railroad Company was the defendant, for the sum of sixteen thousand four hundred and thirty-nine $\frac{63}{100}$ dollars, together with his costs and charges by him about his suit in that behalf expended, which to your orator as such plaintiff were adjudged, as will appear by the record thereof; which said judgment is still in full force, unappealed from, unreversed, and unsatisfied.

That on the 18th day of January, 1883, an execution was duly issued upon said judgment against the goods and chattels, lands and tenements, of the said St. Louis and Keokuk Railroad Company, directed to the marshal of the eastern district of Missouri, that being then and ever since and still the district in which was situate the principal office and chief place of business of said St. Louis and Keokuk Railroad Company, which said execution was made returnable to this court on the 3d Monday of March, 1883.

That afterwards, on said 3d Monday, the same being the 19th day of March, 1883, said execution was by said marshal duly returned into this court and filed by the clerk thereof, with a return to
635 the effect that said marshal had been unable to find any property of the said St. Louis and Keokuk Railroad Company on which he could levy the same, and said marshal accordingly returned the same wholly unsatisfied.

Your orator further avers that by the rendition of the judgment aforesaid he became a judgment creditor of said St. Louis and Keokuk Railroad Company and acquired a lien upon all its assets.

He also avers that said St. Louis & Keokuk Railroad Company was organized and incorporated under and by virtue of an act of the General Assembly of the State of Missouri, approved February 16, 1857, entitled "An act to incorporate the St. Louis and Keokuk Railroad Company;" that its corporators accepted said charter and duly organized thereunder and proceeded to construct a railroad on the route authorized by said charter, said route being and lying wholly within this district; that in the location and construction of said road it incurred the debt upon which the foregoing recited judgment was obtained, all of the same having accrued prior to March 4th, 1873.

That on June 3d, 1872, George Greene, William W. Walker, George Douglas, John F. Ely, William Buchanan, John W. Barrett, Walton Perkins, Daniel F. Waddy, S. R. Woolfolk, Nathan S. Dimmitt, Wilson B. Elliott, Stephen J. Reynolds, and James D. Pitt, all of them then being, as your orator is informed and as he believes, either stockholders or directors and officers of the said St. Louis and Keokuk Railroad Company, and together constituting
636 the active and controlling force of said corporation, proceeded to organize and incorporate a new railroad corporation under the general statutes of the State of Missouri, which assumed the corporate name of the St. Louis, Hannibal and Keokuk Railroad Company, and which corporation is one of the respondents herein. In said new corporation the above-named parties constituted themselves the first board of directors. It was without any capital, except the mere nominal amount required for its organization under the laws of this State. The route selected for the road it proposed to build also is wholly within this district and was identical with that of the St. Louis and Keokuk Railroad Company, except that instead of going through Louisiana, in Pike county, the new road proposed to go through Bowling Green, in said county, and instead of terminating at some point at the then North Missouri railroad it proposed to terminate at the city of St. Louis, Missouri.

And your orator avers that said new company was formed for the express and distinct purpose of absorbing the old one, getting possession and control of its assets without paying therefor, and of carrying out the plans of the old one with the change of route as indicated, which change the old company had endeavored to make, but by reason of the refusal of the General Assembly of this State to amend its charter was prevented from doing.

That after signing the articles of association required by
637 law for organization of an incorporation, but before said articles had been filed or a certificate of incorporation issued, said corporators held a meeting on June 11th, 1872, elected officers, and, in pursuance of their plan of absorbing the old company and obtaining its assets without paying its debts, appointed three of their number an executive committee, which committee was authorized to purchase the right of way, grading, bridging, and ties, as well as all other rights, properties, and franchises of the said St. Louis and Keokuk Railway Company, and to pay for the same in the stock of said company.

That thereupon said incorporators used their position and offices in said old corporation to bring about the proposed transfer and effect the consummation of their said schemes.

That said St. Louis and Keokuk Railroad Company was then heavily in debt; that its property, consisting of a road-bed, bridging, right of way, and material, also included rights to subscriptions and bonds from the counties of Lincoln and Ralls, in this State, and was worth much more than all its indebtedness, being worth, as your orator is informed and believes, about twenty hundred thousand dollars; that it was also a part of the scheme of the projectors of said respondent and of its officers and of both respondents to get rid of the obligations of said old company to its creditors, and to place its assets out of their reach. With that object, as well as for the purposes above set out, said corporators, in their capacity of officers, directors, and stockholders in the St. Louis and Keokuk Railroad Company,
638 on or about the 4th day of March, 1873, caused said St. Louis and Keokuk Railroad Company to execute a deed of assignment conveying to the St. Louis, Hannibal and Keokuk Railroad Company all the franchises, rights, and interests of said St. Louis & Keokuk Railroad Company, its right of way, grading, bridges, ties, and its whole property, then of great value, to wit, of the value of about twenty hundred thousand dollars, as your orator is informed and believes, on the nominal consideration of shares of stock in the new company, which had no value whatever, except what they might acquire by virtue of the property conveyed to it by said old company.

That, in pursuance of the terms of said agreement, said respondent, The St. Louis, Hannibal & Keokuk Railroad Company, on or about said 4th day of March, 1873, entered into possession of a large part of said assets, and from that time onward, and as fast as they came into the nominal control of said St. Louis and Keokuk Railroad Company, and in the years 1874, 1875, and as late as 1877, said St. Louis and Keokuk Railroad Company turned over and transferred to said respondent, the said St. Louis, Hannibal & Keokuk Railroad Company, its property and assets on no other consideration than as above stated; and, further, to absorb and assimilate said old company, the last-named respondent from time to time exchanged its stock for shares of stock in the old company, so that at this time it has taken up almost the whole of the issued
639 stock of the old company in exchange for stock in its new organization.

Your orator charges that all of said transfers were without value; that the respondent, the said St. Louis, Hannibal and Keokuk Railroad Company, and all its officers well know of the existence of the claim of your orator; that said transfers are a fraud upon his rights, inasmuch as they have removed all assets of said St. Louis and Keokuk Railroad Company from the reach of an ordinary execution, and that the same were made subject to the payment of the debts of said old corporation, of which respondent, The St. Louis, Hannibal and Keokuk Railroad Company, had full notice and knowledge; that the said last above named respondent is, to

all intents and purposes, the old St. Louis and Keokuk Railroad Company, doing business in the name of the St. Louis, Hannibal and Keokuk Railroad Company; that it keeps up the corporate organization of the old company, pays its nominal officers, controls all its operations, is in possession of all its assets, operates the railroad constructed by it, and the very deed of assignment, of date March 4, 1873, heretofore referred to, was signed and executed by persons as officers of the St. Louis and Keokuk Railroad Company who then were officers and stockholders of the respondent, the said St. Louis, Hannibal & Keokuk Railroad Company; that thereby said last-named respondent made itself a trustee for all creditors of said St. Louis and Keokuk Railroad Company, took and now is in possession of the assets thereof, with full knowledge and actual
640 notice of your orator's claim and of the fact that it was unpaid; paid nothing of value for all or any of the assets then assigned to it, and afterwards from time to time turned over to it and hold the same subject to the payment of this debt; that respondents pretend to the contrary, however, and refuse to pay your orator or recognize his claim; that all of said assets are within this district; all of which doings and pretenses are contrary to equity and good conscience and tend to manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this kind are properly cognizable and relievable—

To the end that the said St. Louis, Hannibal and Keokuk Railroad Company and the said St. Louis and Keokuk Railroad Company, who are made partys defendant to this bill, may be required to make (by their proper officer or officers) full, true, and direct answer to the same, but not under oath, the answer under oath being hereby waived; that the aforesaid judgment of your orator be decreed to be a lien upon all the property of said respondents; that the said respondents be decreed to pay your orator the amount so as aforesaid due to him for principal and interest on his said judgment, as well as costs incurred in obtaining the same, together with your orator's costs and charges in this behalf expended; that said respondent, The St. Louis, Hannibal and Keokuk Railroad
641 Company, be enjoined from selling, assigning, or encumbering the property in its hands until your orator's claim is paid; that if necessary a receiver be appointed to take possession of said respondent's road and collect and realize out of its assets enough to pay the same; that an account be taken of all the assets and property received by said respondent and of its increase and earnings; and that your orator may have such further or other relief in the premises as the nature of the circumstances of the case may require and to this honorable court shall seem meet.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said St. Louis, Hannibal and Keokuk Railroad Company, and to the said St. Louis and Keokuk Railroad Company, defendants, commanding

them, on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against them.

And your orator, as in duty bound, will ever pay, &c., &c.

GEO. D. REYNOLDS,
Solicitor for Complainant.

JAMES CARR,
Of Counsel.

642 EASTERN DIST. OF THE STATE OF MISSOURI, } ss:
City of St. Louis, }

Josiah Fogg, being duly sworn, deposeth and saith that he is the complainant in the foregoing bill named, and has read the same and knows the contents thereof; that said bill is true of his own knowledge except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

JOSIAH FOGG.

Sworn to before me this 3d day of May, 1883.

[SEAL.]

A. P. SELBY,
U. S. Com'r, E. D. Mo.

And afterwards, to wit, on the 2d day of July, 1883, defendants filed their answer to plaintiff's bill of complaint in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

Answer.

In the Circuit Court of the United States in and for said District.

JOSIAH FOGG
against
THE ST. LOUIS, HANNIBAL & KEOKUK RAILROAD COMPANY and THE ST. LOUIS & KEOKUK RAILROAD COMPANY.

These defendants, now and at all times hereafter saving and reserving to themselves and each of them all benefit and
643 advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them or either of them to make answer unto, these defendants, severally answering, say that they have no knowledge, information, or belief as to whether said complainant is a citizen of the State of Colorado or of any State, Territory, or place other than the State of Missouri.

These defendants, further answering, admit that they are railroad corporations incorporated and organized, and are citizens and have their chief offices and principal places of business, as alleged in said complainant's said bill of complaint.

The defendants further admit that complainant recovered a judgment in his favor in this court against the defendant, The St. Louis and Keokuk Railroad Company, for $16,439.63, together with costs and charges, and that said judgment is still in full force, unappealed from, unreversed, and unsatisfied, as complainant has in that behalf alleged.

These defendants further admit that an execution was issued upon said judgment against the goods and chattels, lands and tenements, of said defendant, The St. Louis and Keokuk Railroad Company, and returnable as alleged.

644 These defendants further admit the return of said execution wholly unsatisfied, as plaintiff has alleged.

Defendants, further answering, admit that said complainant became by the rendition of said judgment a judgment creditor of said defendant, The St. Louis and Keokuk Railroad Company, but defendants deny that complainant acquired any lien thereof upon all or any of the assets of said company.

These defendants admit that the defendant, The St. Louis and Keokuk Railroad Company, was organized and incorporated under act of General Assembly of State of Missouri, as said complainant hath alleged.

These defendants, further answering, admit that the corporators of said last-named company accepted said charter and duly organized thereunder and proceeded to construct a railroad on the route authorized by said charter, and that said route lay wholly within this district.

These defendants, further answering, say that they deny that in the location or construction of said road said defendant, The St. Louis and Keokuk Railroad Company, incurred the debt upon which the above-mentioned judgment was obtained, but they admit that the indebtedness upon which said judgment was rendered accrued prior to Marth 4th, 1883.

And these defendants, further answering, admit that on June 3d, 1872, the persons named in said bill of complaint proceeded

645 to organize and incorporate a new company and railroad corporation under the general statutes of the State of Missouri, and that said corporation assumed the corporate name of the St. Louis, Hannibal and Keokuk Railroad Company, and that it is one of the defendants herein.

And these defendants admit that said several named persons constituted the first board of directors of said corporation, and that the route selected for the road it proposed to build is wholly within this district, but deny that its route is identical with that of the St. Louis and Keokuk railroad, as alleged in said bill of complaint, or in any way or manner or to any extent identical therewith.

And, further answering, these defendants deny that all or any of said persons were either stockholders or directors or officers of said

St. Louis and Keokuk Railroad Company, and they deny that said persons constitute or constituted the active or controlling force of said corporation, and deny that it was without capital, as the complainant hath in that behalf alleged.

These defendants, further answering, deny that said St. Louis, Hannibal and Keokuk Railroad Company was formed with any purpose of absorbing the St. Louis and Keokuk Company, or that said St. Louis, Hannibal and Keokuk Railroad Company was formed for the purpose of getting possession or control of the assets of said St. Louis and Keokuk Railroad Company without paying therefor,
or for any other purpose, or of carrying out any plans of the
646 St. Louis and Keokuk Railroad Company, or any change of
route of said St. Louis and Keokuk Railroad Company.

These defendanis deny that the St. Louis & Keokuk Railroad Company had endeavored to make a change in route, or that it was prevented from doing so by reason of any refusal of the General Assembly to amend its charter, as complainant has alleged, or in any other way or manner whatever.

These defendants, further answering, deny that after signing the articles of association, as required by law, but before said articles had been filed or certificate of incorporation issued, said corporators held a meeting on June 11th, 1872, or at any other time before said articles were duly filed and certificate of incorporation issued, and they deny that said persons were elected officers of said corporation, or that they appointed three or any number an executive committee in pursuance of any plan of absorbing the St. Louis and Keokuk R. R. Company, or of obtaining its assets without paying its debts, and they deny that any such plan or purpose ever existed; and, further answering, deny that any such or any other executive committee was ever authorized to purchase the property or franchises of said St. Louis and Keokuk R. R. Company for any such purpose as that alleged in said bill of complaint.

And these defendants, further answering, say that they deny that said incorporators of the St. Louis, Hannibal and Keokuk R. R. Co. ever used their positions or offices in said St. Louis and Keokuk
R. R. Co. to bring any proposed transfer about or to affect
647 the consummation of any schemes, as plaintiff hath in that
behalf alleged and charged in his said bill of complaint.

These defendants, further answering, admit that said St. Louis and Keokuk Railroad Company was then heavily in debt, but they deny that its property, consisting of road-bed, bridging, right of way, and material and subscriptions, were worth more than two millions of dollars; and these defendants deny that the conveyance mentioned in complainant's bill of complaint was made on the nominal consideration of shares of stock in the St. Louis, Hannibal & Keokuk Railroad Company, and they deny that the shares of stock of the St. Louis, Hannibal and Keokuk Railroad Company had no value whatever save what they might acqure by virtue of the property conveyed to it by the St. Louis and Keokuk Railroad Company.

These defendants, further answering, deny that the defendant, The St. Louis, Hannibal and Keokuk Railroad Company, at the time

stated or at any other time, entered into possession of a large or any portion of said assets under or in pursuance of the terms of any agreement procured or obtained, as said complainant hath in that behalf alleged.

They admit that the St. Louis, Hannibal & Keokuk Railroad Company entered into possession of and obtained the assets of the St. Louis and Keokuk Railroad Company, but they deny that said assets were obtained from time to time, as said complainant
648 hath alleged; but, on the contrary, said defendants aver that all of the assets and property of said St. Louis and Keokuk R. R. Co. were wholly and completely conveyed and delivered to said St. Louis, Hannibal and Keokuk R. R. Co. on the 4th day of March, 1873; and these defendants deny that said assets and property were so conveyed, turned over, and delivered on no other consideration than as stated by complainant, but in the manner and upon the consideration hereafter in this answer more fully stated.

These defendants, further answering, deny that the defendant, The St. Louis, Hannibal & Keokuk R. R. Co., did at any time exchange its stock for shares of stock in the St. Louis and Keokuk R. R. Co. for the purpose of absorbing or assimilating said St. Louis & Keokuk R. R. Co.; but, on the contrary, these defendants aver that any and all stock in said St. Louis and Keokuk R. R. Co. was sold and transferred in good faith and for a valuable consideration, the stockholders of said St. Louis and Keokuk R. R. Co. receiving, if they so elected, an equivalent amount of stock in the said St. Louis, Hannibal & Keokuk R. R. Co.

These defendants deny that any of said transfers of stock were without value, and they further deny that said St. Louis, Hannibal & Keokuk R. R. Co. or any of its officers knew of existence of any alleged claim of complainant against the St. Louis and Keokuk R. R. Co.

These defendants deny that said transfer was a fraud on any right of said complainant or any other person, or that the said St.
649 Louis, Hannibal and Keokuk R. R. Company had removed all or any of the assets of said St. Louis and Keokuk R. R. Co. from the reach of an ordinary execution, or that said transfers were made subject to the payment of the debts of said St. Louis and Keokuk R. R. Co., or that the defendant, The St. Louis, Hannibal and Keokuk R. R. Co., had any notice or knowledge of any such alleged facts or of the facts out of which complainant's said claim arose against the St. Louis & Keokuk R. R. Co.

These defendants, further answering, deny that said St. Louis, Hannibal & Keokuk R. R. Co. is for any purpose or intent the St. Louis & Keokuk R. R. Co., doing business in the name of the St. Louis, Hannibal and Keokuk Railroad Company. These defendants further deny that the St. Louis, Hannibal & Keokuk R. R. Co. keeps up the organization of the St. Louis and Keokuk R. R. Co., or that it pays its officers. They deny that it controls all or any of its operations or has possession of any of its assets save in the manner hereafter more fully stated. It is true that some of the stockholders and officers of the St. Louis, Hannibal and Keokuk R. R. Company

were also officers of the St. Louis and Keokuk R. R. Co. on March 4, 1873, when the conveyance referred to in the bill was made and the property thereby conveyed was delivered; but these defendants aver that said two corporation defendants in that transaction dealt with each other in their corporate capacities openly and without any fraud or covin whatever; and they deny that by reason
650 of said conveyance said St. Louis, Hannibal and Keokuk R. R. Co. made itself a trustee for any of the alleged creditors of said St. Louis and Keokuk Railroad Company, or the said St. Louis, Hannibal & Keokuk R. R. Co. took or now is in possession of any assets of said St. Louis and Keokuk R. R. Co., with any knowledge or notice of any claim of this complainant or of the fact that any such alleged claim remained unpaid, or that it is now in possession of any such assets at all.

And, further answering, these defendants deny that said St. Louis, Hannibal and Keokuk R. R. Co. paid nothing of value for the assets formerly of said St. Louis and Keokuk R. R. Co. so conveyed, or that said St. Louis, Hannibal and Keokuk R. R. Co. holds said assets or any part of them subject to the payment of any debt of said complainant against the St. Louis & Keokuk R. R. Co.

And these defendants, further answering, allege that on the 4th day of March, A. D. 1873, the said defendant, The St. Louis and Keokuk Railroad Company, then being in possession of and the owner of its entire railroad, and also all the lands, road-bed, embankments, tenements, hereditaments, and appurtenances belonging to or connected with the said railroad or in any manner used or employed or to be used or employed in operating the same, and all rails, ties, fencing, and erections of every kind belonging to or upon or connected with said railroad and the use thereof, and also all and every right of way, license, easement, right, privilege, and im-
651 munity of said railroad company possessed by it under its charter, with the full right and authority to have, hold, and use such right of way, easement, rights, privileges, and immunities and all other effects and property belonging to it, did, by a good and sufficient conveyance, in consideration that the other of said defendants would and should assume and fully pay, satisfy, and discharge all the debts, liabilities, and obligations theretofore made or incurred by or legally imposed upon the said St. Louis and Keokuk R. R. Co. for right of way, station grounds, ties, or bridging, and other good and valuable considerations in said conveyance mentioned, *did* in good faith grant, bargain, and sell and convey each and every of the property of said St. Louis and Keokuk R. R. Company above described and all other of the property of whatsoever name and description.

That in pursuance of said conveyance said defendant, The St. Louis, Hannibal & Keokuk R. R. Co., entered into immediate possession of all of said property, and has carried out and performed each and every of the covenants of said conveyance on its part to be kept and performed, and had no knowledge or notice of the alleged claim of the above-named complainant at any time before filing of said bill; and these defendants further aver that they have since

learned, and aver such to be the fact, that said complainant's alleged claim, in so far as complainant ever had any such claim or
652 demand, which the defendants do not admit, was based upon and arose out of matters all of which accrued prior to the 4th day of May, 1870, and was matured and due on that date; nevertheless the said complainant failed to enforce or proceed in any court for the enforcement of his pretended claim until the 21st day of September, 1881, when he first brought the action mentioned in his bill of complaint; and these defendants further aver that ever since said 4th day of March, A. D. 1873, in good faith and with the full knowledge of said complainant, the said St. Louis, Hannibal and Keokuk R. R. Co. has been in open, notorious, undisturbed, adverse, and peaceable possession of all the assets and property of said St. Louis & Keokuk R. R. Co. under and by virtue of and pursuant to said conveyance made as aforesaid, and that if any cause of action existed in favor of said complainant by reason of any of the matters and things charged in his said bill it so existed on and of the said date; notwithstanding which said complainant has never at any time questioned said transfer until the time mentioned last aforesaid, but has suffered and permitted the said defendant, The Hannibal Company, to remain in undisturbed possession of all of said property, and has by his silent acquiescence during all that time suffered and permitted the capital stock of said St. Louis, Hannibal and Keokuk R. R. Co. to be dealt in, transferred, hypothecated, and otherwise disposed of to many *bona fide* purchasers, who took and now hold the same upon the faith and credit of said assets so transferred,
653 without knowledge or notice of any claim thereto now set up by said complainant, and said St. Louis, Hannibal and Keokuk R. R. Co. during all that time has used, held, and owned notoriously all of said assets as its own property, and many persons have dealt with it and extended credit to it on the faith of its exclusive ownership of said assets, and many of said credits have not yet expired.

These defendants therefore allege and charge the fact to be that said complainant has been guilty of gross laches in prosecuting his said alleged claim against the assets and property so transferred and now in the hands and possession of the defendant, The St. Louis, Hannibal and Keokuk R. R. Co., and its *bona fide* vendees and grantees, and said complainant has in equity and good conscience, by reason of his said laches, silence, and acquiescence in the premises as aforesaid, no lien or claim upon any of said assets whatever which a court of equity ought to notice or protect.

And these defendants, further answering, say that if said complainant had any cause of action or suit against these defendants or either of them for or on account of or concerning any of the said several matters and things averred in said bill of complaint, which these defendants do not admit, that such cause of action or suit did not accrue or arise within five (5) years before the said bill was filed or these defendants served with process; nor did these defendants or either of them within 5 years before the said bill was exhibited

or process sued out against these defendants promise to pay
654 any sum of money, acknowledge the existence of any trust, claim, lien, or demand for or by reason of any of said matters charged in said bill of complaint, nor did any cause of action arise to the complainant by reason of any thing or matter set forth and alleged in his said bill of complaint, or any liability thereon or therefor on the part of these defendants or either of them at any time within 5 years before the time last aforesaid, and that by a certain statute of the State of Missouri, being chapter 48 of the Revised Statutes of said State, entitled "of the limitations of actions," especially by section 3230 of said Revised Statutes, said pretended claim or cause of action set up in said complainant's said bill of complaint is barred.

And these defendants, further answering, say that if said complainant had any cause of action or suit against these defendants or either of them for or on account of or concerning any of the said several matters and things averred in said bill of complaint, which these defendants do not admit, that such cause of action or suit did not accrue within ten (10) years before the said bill was filed or these defendants served with process, nor did these defendants or either of them within ten (10) years before the said bill was exhibited or process sued out against these defendants promise to pay any sum of money, acknowledge the existence of any trust, claim, lien, or demand for or by reason of any of said matters charged in said bill of complaint, nor did any cause of action arise to the complain-
655 ant by reason of any thing or matter set forth and alleged in his said bill of complaint or any liability thereon or therefor on the part of these defendants or either of them at any time within ten (10) years before the said bill was filed or these defendants served with process, and that by a certain statute of the State of Missouri, being chapter 48 of the Revised Statutes of Missouri, entitled "of the limitations of actions, &c.," and especially by section 3229 of said Revised Statutes, said pretended claim or cause of action set up in said complainant's said bill of complaint is barred.

And the said defendant, the said St. Louis, Hannibal and Keokuk R. R. Co., does not admit that the defendant, The St. Louis and Keokuk R. R. Co., is or ever was indebted to complainant, or that said judgment established any indebtedness on the part of complainant as against said St. Louis and Keokuk Railroad Company by which said St. Louis, Hannibal and Keokuk R. R. Co. is bound or concluded, and further says that complainant's said claim against said St. Louis & Keokuk R. R. Co. has been long since fully paid and extinguished; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

SMITH & HARRISON,
Sol's for Defendants.

WM. P. HARRISON, *Of Counsel.*

656 And afterwards, to wit, on the 22d day of September, 1883, plaintiff filed exceptions to part of defendants' answer, which *is* in words and figures as follows, to wit:

Exceptions to Parts of Answer.

UNITED STATES OF AMERICA, *Eastern District of Missouri,* } *ss:*

In the Circuit Court of the United States for said District. In Equity.

JOSIAH FOGG, Plaintiff,
vs.
THE ST. LOUIS, HANNIBAL AND KEOKUK RAILROAD Company and The St. Louis and Keokuk Railroad Company, Defendants. } No. 2191.

Exceptions taken by the above-named plaintiff to so much of the answer of the defendants as is below designated for insufficiency.

1st. The part of the answer hereby excepted to is as follows: All that part of said answer which is in the words as follows: "And these defendants further aver that ever since said 4th day of March, 1873, in good faith and with the full knowledge of said complainant, the said St. Louis, Hannibal & Keokuk R. R. Co. has been in open, notorious, undisturbed, adverse, and peac-able possession of all the assets and property of said St. Louis and Keokuk Railroad Company under and by virtue of and pursuant to said conveyance made as aforesaid, and that if any cause of action existed in favor of said complainant by reason of any of the matters and things charged in his said bill it so existed on and after said date, notwithstanding which said complainant has never at any
657 time questioned said transfer until the time mentioned last aforesaid, but has suffered and permitted the said defendant, The Hannibal Company, to remain in undisturbed possession of all of said property and has by his silent acquiescence during all that time suffered and permitted the capital stock of said St. Louis, Hannibal & Keokuk Railroad Company to be dealt with, *in* transferred, hypothecated, and otherwise disposed of to many *bona fide* purchasers, who took and now hold the same upon the faith and credit of said assets so transferred without knowledge or notice of any claim thereto now set up by said complainant, and said St. Louis, Hannibal and Keokuk R. R. Co. during all that time has sued, held, and owned notoriously all of said assets as its own property, and many persons have dealt with it and extended credit to it on the faith of its exclusive ownership of said assets, and many of said credits have not yet expired. These defendants, therefore, allege and charge the fact to be that said complainant has been guilty of gross laches in prosecuting his said alleged claim against

the assets and property so transferred and now in the hands and possession of the defendant, The St. Louis, Hannibal & Keokuk Railroad Company, and other its *bona fide* vendees and grantees, and said complainant has in equity and good conscience, by reason of his said laches, silence, and acquiescence in the premises as aforesaid, no lien or claim upon any of said assets whatever which a court of equity ought to notice or protect."

658 First exception. For that in the said part of the answer of the defendants above set out the said defendants have set forth no facts which constitute a bar or defence to the complainant's right in equity to recover on the judgment set out in his bill and admitted in the answer.

Second exception. For that it does not appear by the averments in said parts of said answer that the defendant, The St. Louis, Hannibal & Keokuk Railroad Company, suffered any injury by the alleged laches or acquiescence of the complainant.

2nd. The part of the answer also excepted to hereby is as follows:

All that part of said answer which immediately follows the clause last above copied in full and commencing with the words, "And these defendants, further answering, say that if said complainant had any cause of action or suit against these defendants or either of them for or on account of or concerning any of the said several matters and things averred in said bill of complaint, which these defendants do not admit, that such cause of action or suit did not accrue or arise within five (5) years before the said bill was filed," and including all the words and sentences in said answer contained from the words last quoted to the words "and especially by section 3229 of said Revised Statutes said pretended claim or cause of action set up in said complainant's said bill of complaint is barred."

659 (Being all the portions of said answer which set up the 5-year and 10-year statute of limitations as a bar.)

Third exception. For that in said parts of the answer of the defendants last above referred to and described the said defendants have not set out any matters or things which constitute any bar or defence to the plaintiff's cause of action.

Fourth exception. Because the complainant's cause of action, as admitted by the answer of said defendants, did accrue within five years next before the commencement of this suit.

Fifth exception. Because the complainant could not commence a suit against the defendant, The St. Louis, Hannibal and Keokuk Railroad Company, until after he had recovered judgment at law against the defendant, The St. Louis and Keokuk Railroad Company, and had an execution issued thereon and said execution returned unsatisfied, and it appears by the bill and answer in this case that the complainant recovered the judgment upon which this suit is based on the 3d day of October, 1882, and that this suit was commenced on the 2nd day of May, 1882.

In all or some of which particulars the said plaintiff is advised that the said answer of the defendants is insufficient, and that the same

should be stricken out and expunged, and complainant prays that the same be done.

GEO. D. REYNOLDS,
Solic. for Pl'ff.

JAMES CARR, *Of Counsel.*

660 And afterwards, to wit, on the 25th day of September, 1883, the following proceedings were had and appear of record in this cause, to wit:

Exceptions to Answer Overruled.

JOSIAH FOGG, Plaintiff,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*, Defendants. } 2191.

Now come the parties, by their solicitors, and the exceptions to answer heretofore argued and submitted to the court are this day, aftre due consideration, overruled; and thereupon comes the complainant and files replication to said answer.

And on the said 25th day of September, 1883, complainant filed his replication to defendants' answer, which is in words and figures as follows, to wit:

Replication.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

In the Circuit Court of the United States in and for said Circuit and District.

JOSIAH FOGG, Complainant,
vs.
THE ST. LOUIS, HANNIBAL & KEOKUK RAILROAD Company and The St. Louis and Keokuk Railroad Company, Respondents & Defend'ts. } No. 2191.

The replication of Josiah Fogg, complainant, to the answer of The St. Louis, Hannibal & Keokuk Railroad Company and The St. Louis and Keokuk Railroad Company, defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of
661 the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoid-, traversed or denied is true; all which matters and things this repliant is and will be ready

to aver and prove as this honorable court shall direct, and humbly prays as in his said bill he hath already prayed.

GEO. D. REYNOLDS,
Solicitor for Plaintiff.

JAMES CARR, *Of Counsel.*

And afterwards, to wit, on the 5th day of May, 1884, the following further proceedings were had and appear of record in this cause, to wit:

Final Decree.

JOSIAH FOGG, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*, Respondents. } 2191.

This cause came on to be heard at this term and was argued by counsel, and thereupon upon consideration thereof it was ordered, adjudged, and decreed as follows, viz.:

That each of said parties defendant is liable jointly and
662 severally for the amount of the judgment rendered in this court of date October 3d, 1882, in favor of the plaintiff and against the first-named defendant for the sum of $16,439.63 and costs, taxed at $327.08, together with interest thereon, at the rate of six per cent. per annum, to the date of this decree, to wit, the total sum of eighteen thousand three hundred and sixty-five dollars and eleven cents ($18,365.11), the payment of which is adjudged and decreed against said defendants accordingly, including costs of this decree.

And afterwards, to wit, on the 10th day of May, 1884, complainant filed his motion to modify the decree in this cause in words and figures as follows, to wit:

Motion to Modify Decree.

JOSIAH FOGG, Plaintiff,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*

In the Circuit Court of the United States for the Eastern District of Missouri. March Term, 1884.

Now comes the plaintiff and moves the court to modify the decree in the above cause, in this:

First. The costs of this proceeding should be taxed against the fund in the receiver's hands and the receiver ordered to pay the same as costs of the receivership.

Second. A lien superior to the mortgage should be given in favor of this claim;

663 Or, third. If that is not done, the pl'ff asks that the cause be dismissed as to said receiver, without prejudice to the rights of the pl'ff to prosecute his claim to priority.

GEO. D. REYNOLDS,
Of Counsel for Pl'ff.

And afterwards, to wit, on the 10th day of May, 1884, the following further proceedings were had and appear of record in this cause, to wit:

Motion to Modify Decree Overruled.

JOSIAH FOGG, Complainant,
vs.
ST. LOUIS, HANNIBAL & KEOKUK R. R. Co. *et al.*, Respondents. } 2191.

Now comes complainant and files motion to modify the final decree herein; and, the court having considered said motion, it is ordered that the same be, and it is, denied, reserving, however, the determination hereafter of the demand of complainant as between him and the mortgage on which the suit was based, either in this or any other proceeding instituted.

664 On the 21st day of September, A. D. 1880, there was filed in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri a certain petition wherein Josiah Fogg was plaintiff and the St. Louis & Keokuk Railroad Company and the St. Louis, Hannibal & Keokuk R. R. Co. were defendants; and thereupon a writ of summons was issued in the manner provided by law.

On October 11, 1881, plaintiff took a voluntary nonsuit as to defendant, The St. Louis, Hannibal & Keokuk R. R. Co.

665 Be it remembered that on the 9th day of April, A. D. 1881, there was filed in the office of the clerk of the United States circuit court for the eastern district of Missouri in a certain case then pending in said court, in which Josiah Fogg was plaintiff and The St. Louis & Keokuk Railroad Company *et al.* were defendants, an amended petition which is in the words and figures as follows, to wit:

Amended Petition.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

In the Circuit Court of the United States within and for the Eastern District of Missouri, to the March Term, 1881.

JOSIAH FOGG, Plaintiff,
vs.
THE ST. LOUIS AND KEOKUK RAILROAD COMPANY and The St. Louis, Hannibal and Keokuk Railroad Company, Defendants. } No. 1757.

For amended petition, leave of court being first had to file the same, said plaintiff states:

That at the time of the institution of this suit the said plaintiff, Josiah Fogg, was and ever since has been a citizen of the State of Colorado and a resident thereof, and the defendants, The St. Louis and Keokuk Railroad Company and The St. Louis, Hannibal and Keokuk Railroad Company, corporations incorporated and
666 organized under the laws of the State of Missouri, citizens thereof and resident within the said eastern district of Missouri, having their chief offices and principal places of business within said district.

That the said defendant first above named was incorporated and organized as a railroad company under and by virtue of an act of the General Assembly of the State of Missouri, approved February 16th, 1857, entitled "An Act to incoporate the St. Louis and Keokuk Railroad Company," and having accepted the same was duly organized thereunder.

That the said defendant, The St. Louis, Hannibal and Keokuk Railroad Company, was duly incorporated and organized as a railroad company in the year 1872 under and by virtue of the general statutes of the State of Missouri concerning railroad companies.

For first cause of action plaintiff states that heretofore, to wit, on the 23d day of September, 1870, at the city of St. Louis, Missouri, at a meeting of the board of directors of the said defendant, The St. Louis and Keokuk Railroad Company, which meeting was regularly called and held, there was present a legal quorum of said board, and plaintiff being present at said meeting did present to said board an account in writing in his favor and against said defendant for expenses incurred by him on its account for services rendered by him to it, and for money expended by him for it as well as for sundry other items of indebtedness, all of which had accrued prior
667 to the 4th day of May, 1870, to which date said account was brought down. Said account was then and there examined by said board, audited by it, and by vote of said board acknowledged as an indebtedness of said company, and placed on file with said board; that thereupon the said defendant, The St. Louis and Keokuk Railroad Company, on said 23d day of September, 1870, at said meeting of its board of directors reduced said acknowledgment of indebtedness to writing, which is herewith filed as an exhibit, marked Exhibit "A," and at the same time still further evidenced it in writing by an entry, which at said meeting was by the order of said board duly entered and spread upon the records of said defendant in writing and which said record was duly attested by the proper officers of said defendant, and thereby by each of said written instruments acknowledged itself indebted to this plaintiff in the sum of 8,607 dollars and 75 cents for expenses, services, and outlay, and in the further sum of 940 dollars for sundry items, all of which said indebtedness accrued prior to May 4th, 1870. Said written acknowledgment (Exhibit "A"), as well as the said record entry thereof, are both in the words and figures as follows, to wit:

"On an examination of the accounts of the company this day made by the board of directors up to the 4th day of May, 1870, it is found that the amount of charges against said company up to

said 4th day of May, 1870, is the sum of nineteen thousand six hundred and sixty-two and $\frac{75}{100}$ dollars, due to the following-named parties as follows, viz:

668	To Abraham McPike, for expenses & services rendered	$500	00
	To Nathan S. Dimmitt, for services and expense-	$3,115	
	Josiah Fogg, for expenses, services, and outlay	$8,607	75
	Nathan H. Parker	200	
	S. D. Eaton	750	
	L. J. Dryden	700	
	P. Draper, one hundred	100	
	Wm. S. Bullett, for survey	500	
	John F. Cook and others, for survey	1,150	
	Josiah Fogg, items	940	
	Walton Perkins, travelling expense & service	300	
	S. F. Murray	500	
	James McKenzie	2,500	
	John D. S. Dryden, for salary	300	
		$19,662	75

And for that amount only the company hold John S. Wolfe, the contractor, liable for services and liabilities of the company up to that day, he being subject to the other items of charge mentioned in his contract of said 4 May, 1870, which may have been or may be made against him in accordance with said contract after the 4th of May, 1870, the date of the contract aforesaid; and it is ordered that the accounts therefore this day filed be, and the same are hereby, audited and allowed as debts."

Said record entry of acknowledgment of indebtedness was then, to wit, September 23d, 1870, shown and read to plaintiff by the secretary of the said defendant, and on the same day, at the said city of St. Louis, the said written acknowledgment, above
669 copied and herewith filed and marked Exhibit "A," was delivered by the secretary of said defendant, one Nathan H. Parker, to plaintiff by authority of the said board of directors and in the usual performance of the business of his office, the said secretary having first endorsed upon the back of said acknowledgment the following words and figures and initials: "Indebtedness of company to May 4, '70. Recorded on page 93. N. H. P," meaning by the word company the said St. Louis and Keokuk Railroad Company and the initials "N. H. P." being the initial letters of the said Nathan H. Parker's name.

The said record entry of acknowledgment of indebtedness is in the possession of the said defendant and cannot, therefore, be filed herewith; it is on page 93 of the records of said defendant, and is in the words and figures above set out, by means of which said writing and entry as aforesaid the said defendant, The St. Louis and Keokuk Railroad Company, promised and obligated itself, in writing, on said 23d day of September, 1870, to pay to plaintiff said sums,

amounting in the aggregate to the sum of 9,547.75 dollars, on demand.

Afterwards, to wit, on September 23d, 1870, and again on September 26th, 1870, and on divers days thereafter plaintiff demanded of it said sum, but the same or any part thereof has never yet been paid him.

Afterwards, to wit, about the 15th day of May, 1872, the said indebtedness being due and yet wholly unpaid, said defendant, The St. Louis and Keokuk Railroad Company, assigned, transferred, and delivered all of its property, real, personal, and mixed, and all of its assets and choses in action of every kind and wheresoever situated to the other defendant, the said St. Louis, Hannibal and Keokuk Railroad
670 Company, and in consideration thereof, among other valuable considerations, as well as by reason of said assignment, transfer, and delivery, the said last-named defendant promised and agreed to assume and did assume and make itself liable for all the debts and obligations of said St. Louis and Keokuk Railroad Company, among which liabilities was the aforesaid indebtedness to this plaintiff; that ever since the date last mentioned said St. Louis, Hannibal and Keokuk Railroad Company has kept, retained, and had the exclusive benefit, enjoyment, and profit of said property so as aforesaid transferred to it by said St. Louis and Keokuk Railroad Company, and the last-named company has had no assets or property of any kind or description out of which the said claim or any part thereof could have been made.

Plaintiff demanded payment of said claim and accrued interest on said 15th day of May, 1872, and afterwards of said St. Louis, Hannibal and Keokuk Railroad Company, but neither the claim nor any part thereof has ever yet been paid by either of said defendants.

Wherefore plaintiff demands judgment against said defendants for said sum of 9,547.75 dollars so promised and undertaken as aforesaid, as well as for interest thereon from September 23d, 1870, and for costs.

For second cause of action plaintiff states that the said defendants owe him the further sum of eleven hundred and fifty ($1,150.00) dollars with interest thereon from the 23d day of September,
671 1870, for services rendered by him to said defendant, the St. Louis and Keokuk Railroad Company, as its president from the 4th day of May, 1870, to the 23d day of September, 1870, which services were of the value of 250 dollars per month, and at which rate said defendant promised to pay him, the payment of which said sum was assumed by the defendant, the St. Louis, Hannibal and Keokuk Railroad Company, on the 15th day of May, 1872, for value by it received, by its writing obligatory, the original of which is in possession of defendants and cannot be filed by plaintiff.

Wherefore plaintiff also asks judgment for said last-named sum of 1,150 dollars and interest thereon from September 23d, 1870, the date when he demanded payment thereof, and which payment was then refused, and also for his costs.

CARR & REYNOLDS,
Atty's for Plaintiff.

EXHIBIT "A."

On an examination of the accounts of the company made by the board of directors this day, up to the 4th day of May, 1870, it is found that the amount of charges against said company up to said 4th day of May, 1870, is the sum of nineteen thousand six hundred and sixty-two & $\frac{75}{100}$ dollars, due to the following-named parties, as follows, viz:

To Abraham McPike, for expense & services rendered		$500	
To Nathan S. Dimmitt, for services and expense		3,115	
To Josiah Fogg, for expenses, services, & outlay		8,607	75
To Nathan H. Parker		200	
672 To S. D. Eaton		750	
To L. J. Dryden		700	
To P. Draper, one hundred		100	
Wm. S. Bullett, for survey		500	
John F. Cook and others, for survey		1,150	
Josiah Fogg, items		940	
Walton Perkins, travelling expenses, &-		300	
S. F. Murray		500	
James McKenzie		2,500	
John D. S. Dryden, for salary		300	
		$19,662	75

and for that amount only the company hold John S. Wolfe, the contractor, liable for services and liabilities of the company up to that day, he being subject to the other claims of charge mentioned in his contract of said 4th May, 1870, which may have been or may be made against him in accordance with said contract after the 4th of May, 1870, the date of the contract aforesaid, and it is ordered that the accounts therefore this day filed be, and the same are hereby, audited and allowed as debts.

And afterwards, to wit, on the 21st day of April, 1881, defendants filed their demurrer to plaintiff's amended petition, which is in words and figures as follows, to wit:

Demurrer to Petition.

JOSIAH FOGG, Plaintiff,
vs.
ST. LOUIS AND KEOKUK RAILROAD COMPANY *et al.*, Defendants.

673 In the Circuit Court of the United States for the Eastern District of Missouri. March Term, A. D. 1881.

Now come the above-named defendants and demur to the petition of plaintiff herein, because they say that said petition is insufficient in law, in this, to wit:

1. That said petition does not state facts sufficient to constitute a cause of action in either of the counts therein contained.

2. That said petition shows upon its face that both the causes of action attempted to be therein stated are barred by the statute of limitation, and because it appears upon the face of said petition that no cause of action accrued to plaintiff by reason of the matters therein stated at any time within five years next before the commencement of this action.

JOHN A. HARRISON,
Att'y for Defendants.

And afterwards, to wit, on the 23d day of April, 1881, the following proceedings were had and appear of record in this cause, to wit:

Demurrer Overruled.

JOSIAH FOGG, Plaintiff,
vs.
ST. LOUIS & KEOKUK R. R. CO. *et al.*, Defendants. } 1757.

Now come the parties, by their attorneys, and the demurrer of defendants to plaintiff's amended petition having been argued by counsel, and the court being fully advised in the premises, finds the law upon said demurrer for the plaintiff; whereupon it is
674 ordered that said demurrer be, and it is hereby, overruled.

And afterwards, to wit, on the 24th day of May, 1881, defendants filed their answer to plaintiff's amended petition, which is in words and figures as follows, to wit:

Answer to Amended Petition.

JOSIAH FOGG, Plaintiff,
vs.
THE ST. LOUIS AND KEOKUK RAILROAD COMPANY and THE ST. LOUIS, HANNIBAL & KEOKUK RAILROAD COMPANY, Defendants.

In the Circuit Court of the United States within and for the Eastern District of Missouri, to the March term, 1881.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

Now come the above-named defendants and, for answer to the amended petition of plaintiff herein, deny each and every allegation in said petition contained.

And by way of further answer and defence herein, these defendants say that no transaction of any kind, in writing or evidenced by writing, was ever had between them or either of them and plaintiff, and that neither they nor either of them ever made, executed, and delivered any contract or writing to plaintiff, nor was any writing

executed by them or either of them ever delivered to plaintiff, nor was there ever any such writing in existence as that men-
675 tioned in said petition; that these defendants have never had any transaction between themselves, in writing or otherwise, relating to or concerning plaintiff's pretended claim herein, and that neither they nor either of them had had any transaction with plaintiff or any one relating to said pretended claim at any time within five years next before the bringing of this suit.

And defendants say that plaintiff should not be allowed to further have or maintain this action, because they say that no cause of action accrued to plaintiff by reason of any of the matters contained in said petition at any time within five years next before the bringing of this suit.

And by way of further answer defendants say that no cause of action accrued to plaintiff by reason of any of the matters contained in the petition herein at any time within ten years next before the bringing of this suit, and therefore that plaintiff should not be allowed to further have or maintain this action.

Wherefore defendants pray to be hence discharged with their costs.

JOHN A. HARRISON,
Att'y for Defendants.

Received copy of within answer, and same may be filed as per arrangement between us and defendants.

May 24th, 1881.

CARR AND REYNOLDS.

And on the 24th day of May, 1881, plaintiff filed his replication to defendants' answer, which is in words and figures as follows, to wit:

676 *Replication.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

In the Circuit Court. March Term, 1881.

JOSIAH FOGG, Plaintiff,
vs.
THE ST. LOUIS AND KEOKUK RAILROAD COMPANY and THE ST. LOUIS, HANNIBAL AND KEOKUK RAILROAD COMPANY, Defendants.

Now again comes plaintiff and, for reply to the new matter in the answer of the defendants, says—

That the transactions in the amended petition in this case referred to did take place at the times and were of the character set out in said amended petition; that the writings therein referred to were made, executed, and delivered in manner, form, and at the dates therein stated.

That within five years prior to the institution of this suit the causes of action accrued to plaintiff, and new promises and acknowledgments and assumptions of the indebtedness were made, and that within ten years next prior to the institution of this suit the writings referred to in said petition were made, executed, and delivered, and the promises made in writing.

And that each and all of the denials and averments of defendants in said reply contained are untrue.

Wherefore plaintiff, etc., etc.

By his attorneys, CARR & REYNOLDS.

677 And afterwards, to wit, on the 30th day of September, 1882, defendants filed their amended answer, which is in words and figures as follows, to wit:

Amended Answer.

JOSIAH FOGG, Plaintiff,
vs.
ST. LOUIS AND KEOKUK RAILROAD COMPANY, Defendant.

In the Circuit Court of the United States for the Eastern District of Missouri.

Now comes defendant and, by way of amended answer herein, says that it denies each and every allegation in plaintiff's amended petition contained.

And, further answering, defendant states that the alleged statement of account between plaintiff and this defendant did not afford or give plaintiff any right, claim, demand, or cause of action against said defendant, for the reason that, *that which* as appears upon the face of the proceedings and papers set forth and referred to in said amended petition, the defendant sought to have it deter-
678 mined what indebtedness of said defendant, down to the fourth day of May, 1870, one John S. Wolf was bound to assume or pay by virtue of a contract theretofore ostensibly made between himself and said defendant on said 4th day of May, 1870, which said contract is the same mentioned in Plaintiff's Exhibit "A" to said amended petition; yet, in truth and in fact, as the said plaintiff well knew, the said plaintiff was himself in law and in duty bound to assume, discharge, and satisfy the said indebtedness by virtue of the terms, conditions, and requirements of a certain secret contract and arrangement theretofore entered into between himself and said John S. Wolf, or between himself, said Wolf, and one Milo Smith, which said secret contract and arrangement, in law and in fact, made the said plaintiff the real contracting party with said defendant under said contract of May 4th, 1870, and that by the terms of said contract of May 4, 1870, the party contracting with defendant was himself bound to assume, discharge, and satisfy the indebtedness of said company down to said 4th day of May, 1870, whether such indebtedness accrued in favor of plaintiff or otherwise.

And, by way of further answer and defense herein, defendant says that plaintiff ought not to further have or maintain his alleged cause of action, because no cause of action accrued to plaintiff by reason of any of the matters contained in said petition at any
679 time within five years next before the bringing of this suit.

And, by way of further answer, defendant says that plaintiff ought not to further have or maintain this action, because it says that no cause of action accrued to plaintiff by reason of any of the matters contained in said petition at any time within ten years next before the bringing of this suit.

C. H. KRUM AND
JOHN A. HARRISON,
For Defendant.

And afterwards, to wit, on the 30 day of September, 1882, plaintiff filed his replication to defendant's amended answer, which is in words and figures as follows, to wit:

Replication to Amended Answer.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

In the Circuit Court. September Term, 1882.

JOSIAH FOGG, Plaintiff,
vs.
THE ST. LOUIS AND KEOKUK RAILROAD COMPANY, Defendant.

For reply to the new matter set up by the defendant in its amended answer plaintiff says:

He denies that by virtue of the contract of May 4, 1870, he was bound to assume, discharge, or satisfy the indebtedness referred to under the contract alleged or under any contract or agreement, secret or otherwise.

680 Plaintiff denies that he ever made or entered into the contract between himself and John S. Wolf or between himself, said John S. Wolf, and one Milo Smith, as alleged in said answer.

He denies that there was ever any such contract in existence as that referred to by defendant.

He denies that he had any interest with said Wolf in said contract of May 4th, 1870. He further avers that when the account between plaintiff and defendant was stated, on September 22d, 1870, and the same made of record, it was done by the defendant with full knowledge of all the facts in the case, and that the contract of May 4 was modified and a new contract, of date Sept. 22, 1870, entered into between said Wolf and defendant, which contract was made to take the place of the former contract, and in and by said new contract the justice and validity of plaintiff's claim for the amount sued for was fully recognized and ratified in writing by defendant and admitted to be due and owing by the defendant to plaintiff.

Further replying, he avers that the defendant did within 5 years next before the bringing of this suit promise to pay this claim.

And, further replying, he avers that within 10 years next before the bringing of this suit the defendant did promise as in the petition set out.

Finally, plaintiff denies each any every other allegation of new matter in said answer.

A. J. P. GARESCHÉ,
JAMES CARR, AND
681 GEO. D. REYNOLDS,
Att'ys for Plaintiff.

And afterwards, to wit, on the 3d day of October, 1882, the following further proceedings were had and appear of record in this cause, to wit:

Judgment.

JOSIAH FOGG, Plaintiff,
vs.
ST. LOUIS AND KEOKUK RAILROAD COMPANY, Defendant. } 1757.

Now again come the parties, by their attorneys—the plaintiff by Messrs. Carr, Reynolds and Garesché, and the defendant by Messrs. Harrison and Krum—and also come the jury herein as on yesterday, to wit, James B. Roberts, Peter Hown, George H. Cole, A. W. Hathaway, Jacob Kidney, James Griffin, John E. Liggett, Gustav Olshausen, Hezekiah Bates, Joseph P. Wilkerson, Henry W. Hough, and John C. Nulsen, who, after hearing the evidence and arguments of counsel and receiving the charge of the court, return the following verdict: "We, the jury, find for the plaintiff in the sum of nine thousand five hundred and forty-seven $\frac{75}{100}$ dollars, with interest from September 22, 1870.—Henry W. Hough, foreman."

It is therefore considered by the court that the plaintiff, Josiah Fogg, have and recover of the defendant, The St. Louis and Keokuk
682 Railroad Company, the sum of sixteen thousand four hundred and thirty-nine dollars and sixty-three cents ($16,439.63), being the total amount of damages aforesaid by the jury assessed, together with interest thereon, at six per cent. per annum, from September 22, 1870, and also the costs herein laid out and expended, and have thereof execution.

And thereupon said defendant files motion for a new trial herein.

And afterwards, to wit, on the 18th day of January, 1883, there was an execution issued out of the clerk's office of this court in this cause; which execution, together with the marshal's return thereon endorsed, is in words and figures as follows, to wit:

683 EASTERN DISTRICT OF MISSOURI, *sct:*

The President of the United States of America to the marshal of the eastern district of Missouri, Greeting:

Whereas, on the third day of October, in the year of our Lord one

thousand eight hundred and eighty-two, at our circuit court of the United States for the eastern district of Missouri, before our judges thereof, Josiah Fogg, plaintiff, recovered against The St. Louis and Keokuk Railroad Company, defendant, the sum of sixteen thousand four hundred and thirty-nine dollars and sixty-three cents ($16,439.63) for his damages in an action of debt decided in said court, together with his costs and charges by him about his suit in that behalf expended, which to the said plaintiff were adjudged, as appears to us of record:

These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said defendant you cause to be made the damages and costs aforesaid, and that you have the same before the judges of our said court on the third Monday of March next, to render to the said plaintiff the damages and costs, and that you certify to our said judges how you execute this writ.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 18th day of January, in the year of our Lord one thousand eight hundred and eighty-three.

Issued at office, in the city of St. Louis, under the seal of said court, the day and year last mentioned.

[SEAL.] M. M. PRICE, *Clerk*,
By G. L. CRAWFORD, *Deputy*.

684 [Endorsed:] No. 1757. United States circuit court, eastern district of Missouri. Josiah Fogg against St. Louis & Keokuk Railroad Company. *Fi. fa.* Judgment 3d day of Oct., 1882, to March term, 1883.

Damages	16,439 63
Attorneys, Carr, R. & Garesché	22 50
Marshal, F. Coste	15 61
Clerk, M. M. Price	69 65
Notary, Falconer	5 12
Com'r, A. P. Selby	3 00
Witnesses	208 50
This writ & præ.	1 35
	$16,765 36

[Endorsed:] Returned into court and filed — day of ——, 188–. —— ——, clerk. Filed Mar. 19, 1883. A. P. Selby, clerk.

UNITED STATES OF AMERICA,
Eastern District of Missouri.

I return on this writ that I have been unable to find any property of the within-named defendant, The St. Louis and Keokuk Railway Company, on which I can levy this execution, and I return the same not satisfied.

St. Louis, March 17, 1883.

FELIX COSTE,
U. S. Marshal,
By C. E. SOEST, *Deputy*.

Fees, 50c.

685 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record and proceedings in the matter of Josiah Fogg, defendant and cross-complainant in case No. 2301, of De Witt C. Blair, trustee, plaintiff, against The St. Louis, Hannibal and Keokuk Railroad Company *et al.*, defendants, as fully as the same remains on file and of record in said case in my office.

Seal of the United States Circuit Court, Eastern District of Missouri.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 12th day of October, in the year of our Lord eighteen hundred and eighty-six.

A. P. SELBY,
Clerk of said Court.

[Endorsed:] No. —. United States circuit court, eastern district of Missouri. —— —— against —— ——. Duly certified copy of —— in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 188. Josiah Fogg, appellant, *vs.* De Witt C. Blair, trustee. Filed October 15, 1886.

Office Supreme Court U. S.
FILED
JAN 2 1890
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 188.

JOSIAH FOGG, APPELLANT,

vs.

DE WITT C. BLAIR, TRUSTEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

JAMES CARR, *Solicitor*,
WITH WHOM IS GEO. D. REYNOLDS and
E. A. Sumner FOR APPELLANT.

Nixon-Jones Printing Co., 212 Pine St., St. Louis.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 188.

JOSIAH FOGG, APPELLANT,

vs.

DE WITT C. BLAIR, TRUSTEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

On the 6th day of February, 1884, the appellee, De Witt C. Blair, as trustee, filed a bill in the court below, against the St. Louis, Hannibal & Keokuk Railroad Company and others, to foreclose a mortgage or deed of trust given by the St. Louis, Hannibal & Keokuk Railroad Company on or about the first day of August, 1877, on a portion of the line of railroad which it was by its articles of incorporation authorized to construct and maintain from the city of St. Louis to a point in the northeast corner of the State of Missouri opposite to the city of Keokuk, in the State of Iowa, with certain branches mentioned in its articles of incorporation, and the appellant was made a co-defendant in said suit, on the ground that he was a judgment creditor of the St. Louis, Hannibal & Keokuk Railroad Company, but it is averred in said bill that the interest of appellant accrued long subsequent to the lien of said mortgage or deed of trust and is junior and subordinate thereto. (Record, p. 1 *et seq.*)

The bill was not sworn to. On the 7th day of July, 1884, the appellant filed his answer under oath to said bill (Record, p. 21) and also his cross-bill (Record, p. 28).

In his cross-bill appellant in substance alleges that the St. Louis and Keokuk Railroad Company was duly incorporated and organized under act of the General Assembly of the State of Missouri entitled "An act to incorporate the St. Louis and Keokuk Railroad Company" approved February 16th, 1857;

that under said charter the St. Louis & Keokuk Railroad Company was authorized to locate and construct a railroad from some suitable point on the North Missouri Railroad not exceeding thirty miles west of St. Charles, in St. Charles County, Missouri, by way of Louisiana, in Pike county; Hannibal, in Marion county; Canton and LaGrange in Lewis county, Missouri, to some point near the mouth of the Des Moines river, on the northern boundary of the State. That between the first day of January, 1869, and the fourth day of May, 1870, said St. Louis and Keokuk Railroad Company located the St. Louis and Keokuk Railroad between the points named in the charter of said St. Louis and Keokuk Railroad Company, and between the fourth day of May, 1870, and the fourth day of March, 1873, said St. Louis and Keokuk Railroad Company graded and completed said railroad, as it had previously located the same, from the fair grounds near Hannibal to Frankfort, in Pike county, a distance of eighteen miles, and it did a large amount of grading in the county of Lincoln upon its said railroad on which it had located the same; that in grading and completing said railroad as aforesaid, it laid out and expended the sum of $600,000.

That on the 22nd day of September, 1870, this complainant and said St. Louis and Keokuk Railroad Company had a full and final settlement of all claims and demands which he had against said company and which said company had against him, and upon said settlement said company was found to owe and be indebted to him, among other claims, the sum of $9,547.75 for labor done and money furnished in the location and construction of said railroad, to wit, the St. Louis and Keokuk railroad, between said Fair Grounds near Hannibal, and Frankfort, in Pike County, and in the location and grading done on said railroad in the county of Lincoln as aforesaid.

Afterwards, to wit, on the 13th day of June, 1872, without paying said debt to this complainant, George Greene, W. W. Walker, George Douglass, John F. Ely, William Buchanan, John W. Barrett, Walton Perkins, D. T. Waddy, S. R. Woolfolk, N. S. Dimmitt, W. B. Elliott, S. J. Reynolds, and James D. Pitt, being stockholders and directors and constituting the managing and controlling force of said St. Louis & Keokuk Railroad Company, entered into articles of association and organized a railroad corporation under the general statutes of the State of Missouri, under the name of the St. Louis, Hannibal & Keokuk Railroad Company, for the ostensible purpose of building a railroad between the points named in the charter of the said St. Louis and Keokuk Railroad Company
83 and over the same ground most of the way upon which the said St. Louis and Keokuk Railroad Company had located, marked out, and built a portion of its railroad as

aforesaid; that said new corporation was composed almost entirely of the same stockholders and directors and had the same executive officers as said old corporation; that the stockholders in said new corporation never paid anything on the stock issued therein to them; that it had no capital; that it was formed and organized for the purpose of absorbing said old corporation, getting possession and control of all of the property of every kind and description of said old corporation without paying therefor and without paying the debts of said old corporation, and carrying out a scheme to locate and construct its railroad from Frankfort, in Pike County, by way of Bowling Green, the county seat of Pike County, to the southern part of said county instead of building its railroad by way of Louisiana, in Pike County, as required by its charter; that at the time of organizing said new corporation as aforesaid said old corporation had, in addition to the completed portion of its railroad and the grading done thereon in Lincoln county as aforesaid, some unpaid subscriptions made by Ralls and Lincoln counties to the capital stock thereof, said unpaid subscriptions amounting to the sum of about $42,000.00, which said new corporation afterward collected and appropriated to the payment of debts incurred in building of its railroad, to wit, the St. Louis, Hannibal and Keokuk Railroad; that said old corporation owed a large amount of debts, but its
85 property and choses in action which it owned at the time of assigning and transferring its property and choses in action, as hereinafter stated, largely exceeded in value the amount of said debts; that said property of every kind and unpaid subscriptions at the time of making said assignment and transfer, as herein stated, were reasonably worth the sum of about $700,000.00; that it was part of the scheme of said managing and controlling force of said old corporation to place all its property of every description out of the reach of its creditors; that in doing so said old corporation, after said settlement with this complainant as aforesaid, always regarded and treated said claim of this complainant as a just and valid debt due from it to this complainant, and in making the assignment and transfer of all its property of every kind as aforesaid to said new corporation it expressly stipulated and required said new corporation to assume the payment of said debt, among others, to this complainant, and said new corporation did expressly assume the payment of said debt to this complainant and recognized and treated said debt at the time of said assignment and transfer as aforesaid and a long time thereafter as a valid and just debt and a proper charge upon the property assigned and transferred to it as aforesaid, and that plaintiff had a valid and subsisting lien on said property or the payment of said debt superior and paramount to the

defendant and those for whom the defendant is and has been acting as trustee under the mortgage or deed of trust described in the defendant's bill filed in this court on the 6th day of February, 1884, against this complainant and others to foreclose said mortgage or deed of trust.

87 With these objects in view said officers and directors of said old corporation caused it in proper form, on the 4th day of March, 1873, to execute and deliver a deed to said new corporation, whereby it pretended to assign, transfer, and set over to said new corporation its property of every kind and description for the mere nominal consideration of shares of stock in said new corporation, which had no value, and the assumption of the obligations of the old company then existing.

That under said deed of assignment said new corporation ostensibly entered into possession of said completed portion of said St. Louis & Keokuk railroad, extending from the Fair Grounds, near Hannibal to Frankfort, in Pike County, Missouri, and also said uncompleted grading in Lincoln County, Missouri, and all its other property of every kind, including said unpaid subscriptions of Ralls and Lincoln Counties, and continued in possession ever since, until possession was taken by the receiver of this Court under the order thereof made the 7th day of February, 1884, in the case wherein the defendant, De Witt C. Blair, is complainant and this complainant and others are defendants, receiving and appropriating the earnings and income therefrom, although really it was and is said old corporation in possession under the name of said new corporation; that said assignment and transfer were made in fraud of this complainant's rights; that they were made subject to the payment of said debt due from said old corporation to this complainant; that said new corporation is to all intents and purposes the said old corporation under the name of the said new corporation; that said new corporation keeps

89 up the organization of said old corporation, and it elects the same persons or nearly the same persons for the officers and directors of said old corporation as it does for said new corporation, the said old corporation is entirely under the control of said new corporation; that said very deed of assignment was signed by the same persons as officers in each of said corporations; that said new corporation took all of said property of said old corporation with full knowledge and notice of said debt which said old corporation was owing to this complainant as aforesaid; that said debt was unpaid; that said new corporation paid nothing of value for said property assigned and transferred to it as aforesaid, and it has ever since said assignment and transfer held and said receiver still holds said property subject to the lien of this complainant

thereon for the payment of this complainant's judgment and decree, as hereinafter stated.

This complainant avers that by reason of the premises said old corporation could not assign and transfer all of its said property to said new corporation; that said assignment and transfer were beyond the powers of said old corporation and were and are null and void as to this complainant and other creditors of said old corporation; that said new corporation by accepting said deed of assignment and transfer and entering into possession of said property and receiving the earnings and income therefrom as aforesaid without paying said debt due from said old corporation to this complainant made itself a trustee for this complainant as well as for all other creditors of said old corporation.

91 Afterwards, to wit on the 21st day of September, 1880, this complainant commenced an action at law in this court against both said old and new corporations on said debt due and owing to him by said old corporation as aforesaid to recover judgment thereon, but upon the trial — which resulted in a mistrial — of said action at the September term, 1881, of this court, it held and decided that this complainant could not recover on said debt against said new corporation; thereupon said action as to said new corporation was dismissed. There was a second trial of said action against said old corporation on the 3d day of October, 1882, which resulted in this complainant's recovering judgment on said debt against said old corporation for the sum of $16,439.63 and costs; and on the 18th day of January, 1883, an execution was issued on said judgment in favor of this complainant and against said St. Louis and Keokuk Railroad Company to the marshal of this district, returnable to the March term, 1883, of this court, and said execution was returned by said marshal at said term; that no property of said old corporation could be found whereon to levy said execution, and it was returned unsatisfied.

Afterwards, to wit, 3d of May, 1883, this complainant filed his bill in equity against both said old and new corporations in this honorable court to recover the amount of said judgment, interest, and costs from said new corporation, and to have the same declared a first lien on said property, assigned and transferred to said new corporation by said old corporation as aforesaid, and in said bill the facts hereinbefore stated were alleged as the ground upon which this defendant sought to re-

93 cover, and upon issue joined and testimony taken upon the part of this complainant as well as upon the part of said new corporation, said old corporation not contesting said judgment and a full hearing of said bill and said new corporation's answer thereto and this complainant's replication to said answer and proofs before this honorable court, and after ma-

ture and full consideration of said cause it, on the 5th day of May, 1884, rendered a final decree in favor of this complainant and against said new as well as against said old corporation for the full amount of said judgment, interest, and costs, to wit, the sum of $18,365.11 and costs, and said decree still stands in full force, not appealed from, not reversed, and not satisfied.

This complainant, upon further information and belief, says that the defendant as trustee for John I. Blair and Moses Taylor's executors, took the bonds described in his said bill with full notice of this complainant's said claim against said old corporation, and that said claim was wholly unpaid and unsatisfied, and said defendant also took said bonds with full notice of his said claim against and lien upon the property assigned and transferred by said old corporation to said new corporation as herein stated, and that said property was and is subject to the payment of the said debt and the judgment rendered thereon before John I. Blair and said executors of Moses Taylor have or can have any lien or claim in equity thereon for the payment of the bonds in question held by them or either of them; and this complainant further says,
95 upon information and belief, that said John I. Blair and Moses Taylor took said bonds or at least the greater part of said bonds after this complainant had commenced his action at law in this Court against both said old and new corporations to recover judgment on said debt, and they and each of them took said bonds with full notice that said debt was wholly unpaid and that said old corporation had no power to assign all of its said property to said new corporation; that said assignment and transfer were and are null and void, and that said new corporation took and held said property in trust for the payment of this complainant's said claim, and that this complainant had and still has a lien on said property for the payment of his claim.

That the suit commenced by the appellee as trustee for the bondholders — John I. Blair holding $424,000 and Moses Taylor's executors holding $428,000 of the $981,000 issued and secured by said mortgage or deed of trust (Record, pp. 3, 11) was and is a scheme designed and intended to cut out and prevent this appellant from enforcing his said lien and collecting the amount of his said decree against said old corporation as well as said new corporation; and that said suit is a collusive suit between the appellee as trustee for said John I. Blair and the executors of Moses Taylor and the managers of said St. Louis, Hannibal and Keokuk Railroad Company, purposely designed and intended to prevent this appellant from asserting and enforcing his said decree against said property assigned and transferred by said old corporation to said new corporation.

The prayer is that the debt of said railroad companies to this appellant be decreed a lien on the assets prior and superior to said mortgage or deed of trust; that out of the proceeds of the foreclosure sale, after paying the costs, he be paid the amount of his said decree and interest thereon and costs; and that he may have such other and further relief in the premises as the nature of the case shall require. (Record, p. 28 *et seq.*)

This cross-bill was sworn to. The answer to said cross-bill was only a denial or a *quasi*-denial of most of the allegations of said cross-bill; and it was not sworn to, although there was no waiver of an oath thereto. There is no allegation that the appellee took said mortgage or deed of trust in good faith and without notice of the appellant's debt and claim against the property of the St. Louis and Keokuk Railroad Company. (Record, p. 35.)

A replication was filed to said answer on the first day of December, 1884, and the parties were at issue. (Record, p. 39.)

The allegations in the cross-bill were sustained by the proof. The court below dismissed the cross-bill on the 8th day of December, 1885 (Record, p. 41), and on the 13th day of April following, during the same term of the court, the complainant therein took an appeal to this court.

ASSIGNMENT OF ERRORS.

On this record appellant assigns the following errors, viz.:—

First. The court below erred in dismissing the appellant's cross-bill.

Second. The appellant, as a judgment creditor of the old corporation, had a claim and lien in equity on the property transferred by it to the new corporation prior and paramount to the lien of the mortgage or deed of trust to appellee, and appellant was entitled to the relief prayed in his cross-bill; and the court below erred in not granting appellant said relief.

POINTS.

I. The *assets* of a corporation are a *trust fund* for the payment of its debts. Wood v. Dummer, 3 Mason, 308; Curran v. Clerk, 13 Ill. 307; Miller v. Howard, 7 Mill. 392; Union Bank v. Laughlin, 3 Rich. Eq. 86; Jones v. Atlantic R. R. Co., 4 Rich. Eq. 38; Clark, J.

II. The St. Louis and Keokuk Railroad Company was incorporated and organized under a special act of the General Assembly of the State of Missouri entitled, "An act to incor-

porate the St. Louis and Keokuk Railroad Company," approved February 16, 1857, for the purpose of transporting passengers and property. (Record, p. 50.)

By organizing under said act, its charter, it accepted said act and thereby agreed to perform the conditions upon which the charter was granted, *i.e.*, to serve the public by carrying passengers and property as a common carrier.

There is nothing in said charter authorizing the St. Louis and Keokuk Railroad Company to convey its franchises, the completed part of its railroad and all other property and thereby forever disable itself from performing its duties to the public.

The transfer made by the St. Louis and Keokuk Railroad Company of its franchises, completed railroad and all other property to the St. Louis, Hannibal and Keokuk Railroad Company, on the 4th day of March, 1873, was *ultra vires*, and consequently null and void.

Abbot *v.* American Hard Rubber Co., 33 Barb. 578;
Thomas *v.* Railroad Co., 101 U. S.
Hunt v Salisbury 55 Mo 310

III. Even if it shall be held that the old company had authority to make transfer of its franchises and property to the new company, then the new company took said franchises and property with *notice* of the appellant's claim against the old company, because the directors were the same except Samuel P. Wisner, Wm. Buchanan having been put in Wisner's place in the old company as in the new, and the executive officers were precisely the same in each company. "George Greene, President of the St. Louis and Keokuk Railroad Company," and "Wm. Buchanan, Secretary of the St. Louis and Keokuk Railroad Company," sign the deed of transfer for the old company; and "George Greene, President of the St. Louis and Keokuk Railroad Company," and "Wm. Buchanan, Secretary of the St. Louis, Hannibal and Keokuk Railroad Company," sign said deed of transfer for the new company. Whatever the directors and officers of the old company knew (and there is no dispute that the directors and officers of the old company knew all about appellant's claim against it) or had notice of the directors and officers of the new company likewise knew or had notice of.

Hannibal

Cumberland Coal Co. *v.* Sherman, 30 Barb. 553.
Jonesetal v Cuts Mech & Ag Co 18 Cuts 17
Hunt v Bay State Iron Co 97 Mass 279
Prince v Emery 32 N. H. 484
Haven v Emery 33 Jd. 66.

IV. The officers and directors of the old company were incapacitated from transferring the franchises and property of that company to the new company on account of their being the officers and directors of the new company. They could not deal with themselves. It takes two parties to make a contract, and in this case there were not two parties. There was only one party.

Wardell *v.* Railroad Co., 103 U. S. 651.

V. But if it shall be held that the new company did not take the franchises and property of the old company with *notice* of the appellant's claim, then it is averred that the new company was not a *bona fide* purchaser for value of the franchises and property of the old company; in other words that it took said franchises and property without paying anything for them; that it was a volunteer; and as such it took the franchises and property of the old company clothed with a trust in favor of the creditors of the old company which it is bound to execute to the extent of the value of the franchises and property transferred.

§38, Perry on Trusts. §§217, 828 Ibid.
Jones et al v Ark. Mech & Ag Co 38 Ark 17

And said franchises and property being a trust fund and the St. Louis and Keokuk Railroad Company being insolvent, the appellant as a creditor of said company can pursue its assets into the hands of all other persons, except *bona fide* creditors or purchasers.

Hibernia Ins Co v St Z & N O C Co 13 Fed Rep 1-16
Curran *v.* Arkansas, 15 How. 304;
Mobile *v.* Watson, 116 U. S. 289; Blair v St L & K R R Co 22 Fed Rep 36
Taylor *v.* Bowker, 111 *Id.* 110; Jones v Jones 24 Id 145
Terry *v.* Anderson, 95 *Id.* 628.
Nat. Bk v Ins. Co 104 Id 54
Harrison v St P M & M Co 13 Fed Rep 2-22
Fogg v St Z. M & K R R Co 14 Fed 871.

The appellee was bound to take notice of the recitals in the deed of transfer from the old company to the new company, although said deed was not recorded, for the reason that he claims title to the franchises and completed railroad and other property belonging to the old company through said deed of transfer, and if he had examined said deed he would have ascertained that the new company had paid nothing for said franchises and property, and that it assumed to pay the debts and

perform and discharge all the obligations and liabilities of the old company. (Record, p. 125.)

§ 205, Jones on Mortgages;
Masich *v.* Shearer, 49 Ala. 226.

The new company, not being a *bona fide* purchaser for value of the franchises and property of the old company took said franchises and property clothed with a trust in favor of the creditors of the old company. Hence it could not impart any title to the franchises and property of the old company to the appellee as against the creditors of the old company.

The old company had not only acknowledged through its board of directors the appellant's claim to the amount of $9,547.75 to be a just debt (Record, p. 62); but by its contract with the Missouri and Iowa Railway Construction Company, dated the 12th day of April, 1872, it had expressly provided for the payment of said claim; and when the old company transferred its franchises and property to the new company on the 4th day of March, 1873, it was on the express condition, *inter alia*, that the new company would assume and fully pay, satisfy and discharge all the debts, liabilities and obligations theretofore incurred by the old company, excepting only the suit of John S. Wolff then pending against the old company in the circuit court of the United States for the eastern district of Missouri. (Record, p. 125.)

And the new company by its contract with the Missouri and Iowa Railway Construction Company dated the 15th day of July, 1872, expressly provided for the payment of all debts which it had contracted to pay before that date. (Record, p. 177.)

VI. The appellee, De Witt C. Blair, is the *son* of John I. Blair, and John I. Blair and Moses Taylor were *partners* in building the railroad from the south line of Pike County to Gilmore (Record, pp. 174, 175), whatever was sufficient to put them or any of them on *inquiry* which if he or they had followed out would have led to the discovery of appellant's claim against the old corporation, will bind them.

Wardell *v.* Railroad Co., 103 U. S. 651.

John I. Blair's testimony shows that he had notice that there was or had been a railroad company which had county

subscriptions to it, and which had done some work in grading its road; and that the new company had in some way became possessed of said subscriptions and road-bed and right of way (Record, pp.

This was enough to put him on inquiry, and he would have ascertained that the new company was only a volunteer, and that the appellee could not acquire any lien on the property transferred, so long as appellant's claim on it was ~~insufficient~~ unpaid.

The evidence shows that the old company had completed 18 miles of its railroad from the Fair Grounds at Hannibal to Frankfort in Pike county, and it was operating said 18 miles of road when the deed of transfer was made. This is itself imparted notice, and if it had been followed up it would have led to the discovery of the fact that there was or at all events had been a railroad company called the St. Louis and Keokuk Railroad Company, and that it had built and operated and was operating said 18 miles of road from the Fair Ground at Hannibal to Frankfort in Pike county.

The new company, if it were sued, could not sucessfully resist the appellant's claim against the property which was transferred to it by the old company. Now does the appellee stand in any better position with reference to said property than his grantor? It is averred that he does not. He was bound to take notice of the recitals in said deed of transfer, although it was not recorded.

§ 205, Jones on Mortgages;
Masich *v.* Shearer, 49 Ala. 226.
Harris v Fly 7 Paige 421

VII. The appellee's answer to appellant's cross-bill is fatally defective in not averring that he had no notice of appellant's claim; and in not stating fully when, how and from whom his grantor had acquired title and the consideration paid, and when and to whom paid — and the consideration must have actually been paid before he gets notice of the claim, for he cannot pay it after getting notice, and then claim to be a *bona fide* purchaser for value without notice.

His proof upon this vital point is as barren of facts in the foregoing particulars as his answer. There is no allegation that the new corporation ever paid anything for the franchises and property of the old corporation, and there is not a *scintilla* of evidence that it ever paid anything for said franchises and property. Even if the new corporation had taken these franchises and property without notice, it could not hold said property as against the just debt of appellant.

In every respect in which the case can be viewed the decree of the court below is erroneous and should be reversed, and a decree passed granting appellant the relief prayed for in his cross-bill.

JAMES CARR, *Solicitor*,
WITH WHOM IS GEO. D. REYNOLDS, *and*
E. A. Sumner FOR APPELLANT.

Office Supreme Court U. S.
FILED
DEC 20 1889
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1889.

JOSIAH FOGG, *Appellant,*
vs.
DEWITT C. BLAIR, TRUSTEE.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

No. 188.

Brief for Appellee.

WALTER C. LARNED,
Of Counsel.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 87 CLARK STREET.
1889.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 188. October Term, 1889.

JOSIAH FOGG, *Appellant,* vs. DEWITT C. BLAIR, Trustee. } *Appeal from the Circuit Court of the United States for the Eastern District of Missouri.*

BRIEF FOR APPELLEE.

The facts in this case are briefly these: The appellant, Josiah Fogg, had a claim against a railroad known as the St. Louis & Keokuk R. R., a corporation organized under the laws of the State of Missouri, on the 16th day of February, 1857. (See transcript of record, p. 50.) This corporation afterward, on the 4th of March, 1873, transferred all its property to the St. Louis, Hannibal & Keokuk R. R. Co. (Transcript of record, page 123.) This latter corporation was also organized under the laws of the State of Missouri in June, 1872. (See transcript of record, page 77.) Mr. Fogg sued the St. Louis & Keokuk Railroad, and obtained judgment against that railroad, about the 3d day of October, in the year 1882, for the sum of $16,439.63. (Transcript of record, page 239.) He then brought a bill against the St. Louis, Hannibal & Keokuk R. R. to have his judgment against the old corporation declared a lien upon the prop-

erty of the latter corporation. A decree was granted him to this effect on the 5th day of May, 1884. (See transcript of record, page 253.) The total amount of this judgment against the St. Louis, Hannibal & Keokuk R. R. being $18,365.11. The St. Louis, Hannibal & Keokuk R. R. Co. had given a mortgage to Mitchell and Blair as trustees, which mortgage was dated the first day of October 1872. (See transcript record, page 227.) Afterward this mortgage was taken up and cancelled and a new one was made to DeWitt C. Blair, trustee, which bore date the first day of August, 1877. The interest was not paid upon the bonds and the trustee filed his bill to foreclose the latter mortgage on the 6th day of February, 1884. (Transcript Rec., p. 1.) This suit was brought in the United States Circuit Court for the Eastern District of Missouri, and was pushed to a decree for the foreclosure of the mortgage and the sale of the property thereunder. The appellant, Josiah Fogg, answered the bill, and filed a cross-bill in the foreclosure suit (see transcript of Rec., p. 282), in which he seeks to obtain priority for his judgment obtained against the St. Louis, Hannibal & Keokuk R. R., as aforesaid, on the 5th day of May, 1884. It will be noticed that the date of the mortgage and of its record, that is the months of August, November and December, 1887, are nearly seven years prior to the rendering of the decree in favor of Fogg against the St. Louis, Hannibal & Keokuk Railroad Company. Mr. Fogg does not claim to have been a judgment creditor of record of the railroad company until he became so in May, 1884. His contention for superior equity to the mortgage, briefly stated, as set forth in his cross-bill at page 28 of the transcript, is that the old St. Louis & Keokuk road owed him a large amount of money

for work done for it, and admits the claim to be a just one, although it was not reduced to judgment against that company when the deed of transfer before spoken of was made to the St. Louis, Hannibal & Keokuk R. R. Co. Mr. Fogg claims that the latter corporation took the property subject to all indebtedness; that no consideration was given for the deed, and that practically the same parties composed the latter corporation that composed the former. He therefore claims that the old corporation can not assign its property to the new one without the new one becoming trustee for all creditors of the old company, and that the property being thus affected with a trust when it passed into the hands of the new company, the new company could not putupon it a mortgage which would take priority over such a claim. Such are the facts.

In his opinion in this case, on page 41 of the transcript, Judge Brewer very justly says: "It is unquestioned law that a party who holds the legal title to real estate may convey a full title to one who purchases in good faith and pays value, or may mortgage it to one who gives value, and give a prior lien to such mortgagee as against all undisclosed equities. The mortgagee or purchaser will take subordinate to such prior equities if, and only if, he has notice, either actual or constructive, of their existence."

As shown by the statement of the case, there was no constructive notice to these bondholders of the existence of Mr. Fogg's claim. The contract between the St. Louis & Keokuk R. R. Company and the St. Louis, Hannibal & Keokuk R. R. Company was not put on record. Mr. Fogg's claim was not reduced to judgment until long after the mortgage was given and the bonds issued under it. There

was, therefore, absolutely nothing of record on which to base constructive notice. The one question remaining is whether there was any actual notice to the parties holding these bonds and to the trustee under the mortgage, of the existence of the appellant's claim.

With a view to establishing such notice, the appellant took the testimony of Mr. DeWitt C. Blair, the trustee, and of Mr. John I. Blair, one of the leading bondholders. This testimony will be found on pages 172 to 226 of the transcript. The attempt of the appellant to establish any actual notice of the existence of his claim by these witnesses or by any others absolutely failed. Judge Brewer says of this testimony, on page 43 of the transcript: "After reading this testimony through from its commencement to the close (subjected as both witnesses were to a searching cross-examination), it seems to me there is not one syllable to indicate that at the time the interest was acquired by John I. Blair and Moses Taylor in those bonds they had any notice or information or intimation that Josiah Fogg had any claim against the St. Louis, Hannibal & Keokuk Railroad."

There being, then, no constructive notice and no actual notice, it was not possible for the appellant to maintain his claim to superior equity, and Judge Brewer so ordered. (Page 43 of transcript.) A petition for rehearing was filed. (Page 44, transcript.) This petition for rehearing was overruled by Judge Brewer upon substantially the same grounds as his original order rested on. (See pages 45 and 47 of transcript.)

The doctrine of this court with reference to the foreclosure of mortgage securities is well settled, and it is held that no other or further defense will be allowed in a foreclosure suit brought by *bona fide* purchasers of bonds to foreclose a

mortgage securing them than would be allowed if an action were brought in court of law upon the bonds. It is held that the bondholders in such a case stand, in this respect, in the same position as *bona fide* assignees for value before maturity of negotiable promissory notes.

Kenicott v. *Supervisors*, 16 Wallace, 452.
Carpenter v. *Logan*, 16 Wallace, 271.

The record in this case clearly shows that the bonds were held by *bona fide* purchasers, who bought before maturity, and with no notice or knowledge, actual or constructive, of the appellant's claim against the property covered by the mortgage. Therefore the present case is brought directly within the doctrine of the case of *Kenicott* v. *Supervisors*, above referred to. There is nothing whatever shown in this transcript of record to give ground for any exception to the ordinary rule regarding the foreclosure of railroad mortgages as laid down in said case. These principles are well settled and universally acted upon in the United States courts as well as others. The case of the petition of *Kelly* v. *The Receiver of the Green Bay & Minnesota R. R.*, in the Fifth Federal Reporter, page 846, is in point, and was a much stronger case for the petitioner than is this present one. In this suit Mr. Kelly claimed that advances made by him for the construction of the railroad were made with the knowledge and consent of the bondholders. A demurrer was filed to the petition. Judge Dyer, in ruling upon the demurrer, held that in order to displace the mortgage lien "it is not sufficient to say that *some* of the bondholders, or a majority of them, or such as have been most active and influential in promoting the concerns of the road, have done acts which, as to them, create a superior equity in favor of a third party who has

made advances." The mortgage lien as an entirety can only yield to such equitable claim when acts have been done which bind *all* the bondholders because directed and sanctioned by all." Judge Dyer, therefore, sustained the demurrer to the petition, and held also that the allegations in the petition did not show that the advances of money by the petitioner were made at the request of all the bondholders. The petitioner's claim, therefore, which amounted to about $300,000, was dismissed.

It will be observed that this case is a much stronger one in favor of the petitioner than the one at bar, as we have not here the slightest proof of any act upon the part of any of the bondholders authorizing the claim of the appellant or directing the expenditure of his money upon the railroad. For authority upon the point that a mortgage of corporate property takes priority over a subsequent judgment creditor, see Jones on Railroad Securities, page 613, and the cases cited; also Colebrook on Collateral Securities, page 57, and cases cited.

This record shows nothing upon which to support appellant's claim for superior equity. The allegation in his cross-bill (page 34 of the transcript) that Mr. Blair and Mr. Taylor owned certain stock in the railroad company for which they had not paid, has no place in this suit and can not here be tried, as neither Mr. Blair or Mr. Taylor are made parties in this proceeding; nor has any testimony been taken upon that part of appellant's case, excepting the testimony of Mr. Blair, who swears that whatever stock they had was fully paid. (See transcript of record, page 220.)

WALTER C. LARNED,
Sol'r for Appellee.